United States Court of Appeals

for the Second Circuit

APPENDIX

76-6040

United States Court of Appeals

FOR THE SECOND CIRCUIT

UNITED STATES COURT OF APPEALS
FILED
APR 15 1976
A. DANIEL FUSARO, CLERK
SECOND CIRCUIT

Docket No. 76-6040

UNITED STATES OF AMERICA and WALTER ROSS,
Revenue Agent, Internal Revenue Service,
Petitioners-Appellants-Cross-Appellees,

—v.—

GEOFFREY DAVEY, As Secretary of
The Continental Corporation,
Respondent-Appellee-Cross-Appellants.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

JOINT APPENDIX

ARNOLD & PORTER, Esqs.
and
GRUBBS, LEAHY & DONOVAN, Esqs.
Attorneys for Geoffrey Davey, as Secretary of The Continental Corporation.

ROBERT B. FISKE, JR., Esq.,
United States Attorney for the Southern District of New York, Attorney for United States of America and Walter Ross, Revenue Agent.

PAGINATION AS IN ORIGINAL COPY

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DATE	PROCEEDINGS
9-16-75	USA -v- BENJAMIN B. SILLING-Filed Order dated 9-16-75--that respon dent comply with IRS summons by appearing at IRS office on 10-7-75 at 120 Church St.,N.Y.,N.Y.,9th Fl.,Group 21 before Revenue officer Edward Suchon,failure to comply with this orde may subject respondent to a charge of contempt of court and an order of contempt of court may be submitted to the presiding judge without any further notice. DUFFY,J.
Sept.16-75	USA -v- MURRAY PARKER-Filed Order dated 9-15-75--that respondent co mply with IRS summons by appearing at the office of IRS at 120 Church St.,N.Y.,N.Y.,9th Fl.,Group 21 before Revenue Agent Sta ley Stasiowski on 10-17-75--failure to comply with this order may subject respondent to a charge of contempt of court and an order of contempt of court may be submitted without any further notice. DUFFY, J.
Sept. 17-75	USA,et al -v- GEOFFREY DAVEY-Filed Application and Order to Show Cause that respondent comply with IRS Summons-ret. 10-7-75 at 10:30 A.M.,in Rm.506. DUFFY, J.
Sept. 17-75	USA -v- GEOFFREY DAVEY-Filed Memorandum of Law in Support of Summon Enforcement submitted by Govt.
Sept. 17-75	NAT'L. LABOR RELATIONS BOARD ON RELATIONS OF BUCCINI ACCESORIES,INC -v- BARBARA FRAZIER,et al-Filed Marshal's return on order enfor cing subpoena filed 8-19-75--order unexecuted.
Sept. 30-75	USA -v- TOBIAS STONE-Filed Notice of Entry of Order filed 9-3-75.
Sept. 30-75	NAT'L. LABOR RELATIONS BOARD -v- DOROTHY McDANIELS,et al-Filed Mar shal's return on true copy of Order Enforcing Subpoena and Requ iring Respondent to Testify in Proceedings Before the Nat'l. Labo Relations Board--with Marshal's return.
Oct. 1-75	USA -v- BERTHA TAYLOR-Filed Affdvt. and Order to Show Cause for Con tempt dated 9-2-75--that resp. be punished for noncompliance with the aforementioned order. WERKER, J.
Oct. 6-75	USA -v- BENJAMIN B. SILLING-Filed true copy of Order filed 9-15-75 with Marshal's return.
Oct. 7-75	USA -v- CATHERINE N.PAPADAKIS-Filed Endorsed Memorandum on Order to Show Cause filed 6-18-75 -Motion granted,subpoena order.Enforce- ment stayed until 12-8-75. CANNELLA, J.
10-7-75	USA -v- NICHOLAS J. PAPADAKIS,et al-Filed Endorsed Memorandum on Order to Show Cause filed 6-13-75--Motion granted. Subpoena Enforcement stayed until 12-8-75. CANNELLA, J.
Oct. 8-75	USA,et al -v- GEOFFREY DAVEY-Filed Opposition to Application for Sum mons Enforcement.
Oct. 8-75	USA,et al -v- GEOFFREY DAVEY-Filed Affdvt. by George L.Moore.
Oct. 8-75	USA,et al -v- GEOFFREY DAVEY-Filed Affdvt. by William S. Gleason,Jr.
Oct. 8-75	USA,et al -v- GEOFFREY DAVEY-Filed Memorandum of Law in Opposition Summons Enforcement.
Oct. 10-75	IN RE: EMPIRE SMALL BUSINESS INVESTMENT CORP.-Filed Affdvt. and Or der to Show Cause-that subpoena duces tecum served on Amer.Pay roll Services Corp. be quashed-ret. 10-14-75,Rm.506 at 10:00 -- CANNELLA,J.
10-10-75	IN RE: EMPIRE SMALL BUSINESS INVESTMENT CORP.-Filed Affdvt. and Or der to Show Cause-that subpoena served on Nat'l. Payroll Servi ces,Ltd. be quashed.-ret. 10-14-75,Rm.506 at 10:00 A.M. -- CANNELLA,J.
Oct. 10-75	IN RE: EMPIRE SMALL BUSINESS INVESTMENT CORP.-Filed Affdvt. and Or der to Show Cause-that subpoena served on B & N Operating Corp be quashed.-ret. 10-14-75,Rm.506 at 10:00 A.M. --CANNELLA,J.

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DATE	PROCEEDINGS	Date Entry
t. 15-75	USA -v- BERTHA TAYLOR-Filed Amended Order to Show Cause for Contempt with attached Affdvt.--that defendant be punished for contempt for non-compliance with order of Judge Tenney dated 4-23-74 in that she failed to appear pursuant thereto--Ret. 1-21-75, Rm. 506 at 10:30 A.M. DUFFY, J.	
t.16-75	USA -v- GEOFFREY DAVEY-Filed Memo-hearing heard on 10-16-75 -Decision reserved. MEYER,J.	
t. 22-75	IN RE: APPLICATION TO ENFORCE two ADMINISTRATIVE SUBPOENAS DUCES TECUM of the SEC -v- ARTHUR KAUFMAN-Filed application for an order to procure obedience to two subpoenas duces tecum-	
ct. 22-75	IN RE: APPLICATION TO ENFORCE TWO ADMINISTRATIVE SUBPOENAS DUCES TECUM OF THE SEC-Filed applicant's memorandum of law in support of its application	
ct.31,75	In Re: EMPIRE SMALL BUSINESS INVESTMENT CORP: Filed Stip. and Order adjourning motion by National Payroll Services, Ltd. until 11/6/75 and adjourning subpoena duces tecum pending determination of motion.- Pierce, J.	
ct.31,75	IN RE: EMPIRE SMALL BUSINESS INVESTMENT CORP: Filed Stip. and Order adjourning motion by American Payroll Services Corp. until 11/6/75 and adjourning subpoena duces tecum XXXXX pending determination of motion.-- Pierce, J.	
ct.31,75	IN RE: EMPIRE SMALL BUSINESS INVESTMENT CORP: Filed Stip. and Order adjourning motion by B&N Operating Corp. until 11/6/75 and adjourning subpoena duces tecum pending determination of motion. -- Pierce, J.	
t. 23-75	IN RE: PETITION OF ANIELLO DELLACROCE FOR A WRIT OF H/C AD TEST.- Filed Consent Order extending writ of H/C ad test, on consent dated 10-23-75--that said Writ is extended to 11-11-75 and that Aniello Dellacroce shall remain at MCC,150 Park Row,N.Y.,N.Y. until said date,at which time U.S.Marshal,SDNY shall return him to Fed.Penitentiary in Atlanta,Ga. PIERCE,J.	
ct.23-75	SEC -v- AMERICAN STANDARD,INC.,et al Filed Request for Production of Documents-First Set.	
ov.5,75	U.S.A. -v- GEOFFREY DAVEY, etc.-Filed Govt's. Post-Hearing Memorandum in Support of Summons Enforcement.	
ov. 5-75	USA,et al -v- GEOFFREY DAVEY-Filed Memorandum on Behalf of the Respondent.	
ov. 7-75	IN RE: EMPIRE SMALL BUSINESS INVESTMENT CORP.-Filed Affdvt. in Opposition to Separate Motions to Quash three Subpoenas by Joseph P. Sperago.	
ov. 7-75	IN RE: EMPIRE SMALL BUSINESS INVESTMENT CORP.-Filed Respondent's Memorandum of Law in Opposition to the Separate Motions to Quash Subpoena Duces Tecum.	
ov.10,75	IN RE: EMPIRE SMALL BUSINESS INVESTMENT CORP.- Filed Affdvt. of Robert M. Sperago in reply to Affdvt. in Opposition.	
ov. 7-75	USA -v- BERTHA TAYLOR-Filed Endorsed Memorandum on Amended Order to Show Cause for Contempt--Motion withdrawn. So Ordered. BRIEANT,J.	
ov.12-75	IN RE: EMPIRE SMALL BUSINESS INVESTMENT CORP.-Filed Endorsed Memorandum on copy of Affdvt. in opposition to separate motions to quash 3 subpoenas filed 11-7-75--Motion to vacate subpoena in each case is denied. So Ordered. WEINFELD,J.	
ov. 12-75	IN RE: EMPIRE SMALL BUSINESS INVESTMENT CORP. Filed Endorsed Memorandum on Order to Show Cause filed 10-10-75--Motion to quash 3 subpoenas Duces Tecum--denied. So Ordered. WEINFELD,J.	

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D. C. 110 Rev. Civil Docket Continuation

DATE	PROCEEDINGS
11-19-75	USA -v- NICHOLAS J. PAPADAKOS-Filed Order dated 11-12-75--that co pondent fully comply with the summons by appearing at the office of the IRS at 120 Church St.,N.Y.,N.Y. 10007,9th Fl.,before Reve nue Agent John Bruschi or his representative on Monday,12-8-75 a 10:00 A.M. and by producing then the documents and records refer ed to in the Internal Revenue Services' summons.Failure to compl with this order may subject the respondent to a charge of cont of court may be submitted to the presiding judge without any fur ther notice and a writ of body attachment may be issued by the Cl of the Court. CANNELLA,J.
Nov. 24-75	USA -v- CHARLES BARNES-Filed Affdvt. and Order to Show Cause--for punishment of Respondent for contempt for noncompliance with the Order of this Court and why petitioner herein should not have such other and further relief as may be proper. WEINFELD,J. Ret. 12-9-75,Rm.506,at 10:30 A.M.
Nov. 25-75	USA,et al -v- GRAYBAR ELECTRIC CO.,INC.,et al-Filed Affdvt. and Ord Show Cause--for an Order for Respondents to comply fully with IRS Summons,and to award the U.S. costs and disbursements of this ac tion and such other relief as is just.-ret. 12-9-75,Rm.506,at 10
Nov. 26-75	USA,et al -v- GRAYBAR ELECTRIC CO.,INC.,et al-Filed Petitioners' Me morandum of Law.
Dec. 4-75	NATIONAL LABOR RELATIONS BOARD -v- DOROTHY McDANIELS,et al-Filed O der/Enforcing Subpoena and Requiring Respondent to Testify in Pro ceedings before the National Labor Relations Board,true copy of with Marshal's return Order served in re: Dorothy McDaniels.
Dec. 4-75	NATIONAL LABOR RELATIONS BOARD -v- DOROTHY McDANIELS,et al-Filed true copy of Order filed 8-25-75 with Marshal's return not serve
Dec. 4-75	NATIONAL LABOR RELATIONS BOARD -v- DOROTHY McDANIELS,et al-Filed true copy of Order filed 8-25-75 in re:Chapel Bottex,Marshal's return--not served.
Dec. 4-75	USA,et al -v- GEOFFREY DAVEY Filed Memorandum Decision #43,481--The petition is granted subject to the conditions herein contained.So Ordered. WERKER,J.
Dec. 5-75	USA -v- ABE LUBLINER-Filed Petition and Order to Show Cause--for Or der that respondent comply fully with IRS Summons--ret. 12-9-75- at 10:30 A.M. in Rm.506. WEINFELD,J.
12-5-75	USA -v- ABE LUBLINER-Filed Govt.'s Memorandum of Law.
Dec. 9-75	USA,et al -v- GEOFFREY DAVEY Filed Affdvt. by Nathan Greenspan.
Dec. 9-75	USA,et al -v- GEOFFREY DAVEY Filed Memorandum on Behalf of the Res pondent.
Dec. 9-75	USA -v- CHARLES BARNES-Filed Endorsed Memorandum on Order to Show Cause filed 11-24-75--Motion granted on default. Settle Order. METZNER,J.
Dec.10-75	USA -v- ABE LUBLINER-Filed Notice of Appearance for Stephen A. Fla gan.
Dec. 9-75	USA -v- ABE LUBLINER-Filed Endorsed Memorandum on Order to Show Cause filed 12-5-75--Motion granted on consent-attorney present. Submit order. ---METZNER,J.
Dec.10-75	FTC -v- AMERICAN STANDARD,INC.,et al-Filed Stipulation & Order dat 12-2-75--the time for respondent Tribune Co. to answer,object or respond to petitioner's Request for Production of Documents is ex tended to and including 1-15-76. ---METZNER,J.
Dec. 11-75	USA -v- ABE LUBLINER-Filed Order dated 12-11-75--that on 12-30-75, at 10:00 A.M.,the Lubliner appear at the office of Max H. Golub, 469 B'way.,Newburgh,N.Y. to comply with IRS summons served on him on 6-23-75. ---METZNER,J.

M 18-304 SUBPOENAS U.S. GOVERNMENT AGENCIES

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DATE	PROCEEDINGS	D. FEE
Dec.18-75	USA,et al -v- GEOFFREY DAVEY Filed ...ndment to Memorandum Decision ...843,881- Memorandum Decision in ...he above-entitled action dated ... 12-3-75 is amended as follows: ...ge 3,line 10-"Federal Rule of ... Civil Procedure 32" should read ..."Federal Rule of Civil Proce... dure 34". Add the indicated ap...rances at the end of the document. So Ordered. WERKER,J.	
Dec.18-75	USA,et al -v- GEOFFREY DAVEY-Filed ...dgement dated12-17-75 -Ordered ... that Respondent,Geoffrey Davey, ...all promptly,no more than 60 ... days after entry of this judgm...,comply with IRS summons dated ... 1-27-75 --Ordered that the afore...ated duplicate tapes be deli... vered to the IRS upon the paym...by the IRS of the reasonable ... expenses of duplication of such ...apes. WERKER,J.	
Dec. 29-75	USA -v- CHARLES BARNES-Filed Order...ated 12-22-75--that the respon... dent be and hereby is adjudged ...contemot of this Court and ... that a Writ of Attachment direct...ng that respondent be brought ... before the Court to answer for ...s wilful contemot of Court is ... hereby issued. METZNER,J.--Wri...of Attachment is ued 12-31-75.	
Jan. 5-76	USA,et al -v- GRAYBAR ELECTRIC CO.,...C.,et al-Filed Order of Dismis... sal dated 12-30-75--The Order to...show cause signed by Ward,J. on ... 11-21-75,ret. 12-9-75,and adjd....o 12-23-75,in Part I of this ... Court, is hereby withdrawn and ...smissed. WERKER,J.	
Jan. 7-76	USA -v- GEOFFREY DAVEY-Filed transc...pt of record of proceedings on ... 10-16-75 before Werker,J.	
Jan.14-76	NATIONAL LABOR RELATIONS BOARD -v- B...OPHYSICS SYSTEMS, INC.-Filed Me... morandum of Respondent in Opposi...tion to Motions to Sever and for ... Immediate Enforcement of a Subpo...na Duces Tecum.	
Jan.14-75	NATIONAL LABOR RELATIONS BOARD -v- B...OPHYSICS SYSTEMS, INC.-Filed ... Affidvt. in Opposition to Motions ...to Sever and for Immediate En... forcement of Subpoena Duces Tecu...	
Jan.14-76	IN RE: USA -v- CHARLES BARNES-Filed ...rit of Attachment with Marshal's ... return.	
Jan.20-76	FTC -v- AMERICAN STANDARD,INC.,et ...-Filed Respondent's Response ... to Petitioner's Interrogatories ...ith Respect to Venue Motion by ... Tribune Co.(First Set).	
Jan.20-75	USA -v- ARNOLD E. SCHULMAN-Filed Af...vt. and Order to Show Cause-- ... To compel respondent to fully c...ply with IRS Summons served up... on him on 8-7-74 -ret. 1-27-75, ...906, at 10:30 A.M. Bonsal,J.	
Jan.20-76	USA -v- ARNOLD E. SCHULMAN-Filed Gov...'s Memorandum of Law.	
Jan.20-76	NATIONAL LABOR RELATIONS BOARD -v- B...OPHYSICS SYSYSMS, INC.-Filed No... tice of Motion-ret. 1-27-75,at ...:30 A.M.	
Jan.22-76	NATIONAL LABOR RELATIONS BOARD -v-...OPHYSICS SYSTEMS, INC.-Filed No... tice of Motion--ret. 1-27-75, ...:30 A.M.,in Rm. 705.	
Jan.22-76	NATIONAL LABOR RELATIONS BOARD -v-...OPHYSICS SYSTEMS, INC.-Filed Me... morandum of Respondent Biophy...cs Systems,Inc. in Support of ... its Motion to Stay the NLRB H...ring.	
Jan.26,76	NATIONAL LABOR RELATIONS BOARD -v- BIOPH...CS SYSTEMS, INC.-- Filed affdvt. of ... Lois J. Thompson in opposition to...ion to dismiss counterclaim or for ... summary judgment.	
Jan.26,76	NATIONAL LABOR RELATIONS BOARD -v- BIOPH...CS SYSTEMS, INC.-- Filed Memorandum ... of Respondent, Biophysics Systems,...c. in opposition to NLRB motion to ... dismiss counterclaim or for summary...judgment.	
Jan.27-76	NLRB -v- BIOPHYSICS SYSTEMS,INC.-Fi...d Stipulation that Winifred D. ... Morio as the current Regional ...irector of Region Two of the ... NLRB will be substituted for S...dney Danielson as Additional ... Deft. on counterclaim in this ...atter.	

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DATE	PROCEEDINGS
Jan.29,76	IN THE MATTER OF THE TAX LIABILITY OF: LARZA'S RESTAURANT: Fi affdvt. and notice of motion on behalf of Chemical Bank to a summons served upon Chemical Bank pursuant to Rule 45 of F.R.C.P.-- Ret.---2/3/76 at 10:30 A.M. room 506. Part 1.
Jan. 27-76	USA -v- ARNOLD E. SCHULMAN-Filed Endorsed Memorandum on Order Show Cause filed 1-20-76 Motion granted on default. Speci der on notice. Ward,J.
Feb. 4-76	IN RE: THE TAX LIABILITY OF LARZA'S RESTAURANT-Filed Endorsed randum on Notice of Motion filed 1-29-76--Marked off for a appearance. PALMIERI,J.
Feb.-9-76	U.S.A. -V- SANDERS BELVIN, JR.- Filed Govt's. affdvt. and show cause order to compel respondent to testify and produce re demanded in I.R.S. summons.--Ret.-2/10/76 at 10:30 A.M. ro 506--Bonsal, J.
Feb.-9-76	U.S.A. -V- SANDERS BELVIN, JR.- Filed Govt's. Memorandum of L in support of show cause order.
Feb.9,76	U.S.A. -V- MURRAY KATZ- Filed Govt's. affdvt. and show cause o to compel respondent to testify and produce records dema in I.R.S. summons.--Ret. 2/10/76 at 10:30 A.M. room 506.- Bonsal, J.
Feb.9,76	U.S.A. -V- MURRAY KATZ- Filed Govt's. Memorandum of Law in su of show cause order.
Feb. 11-76	USA -v- MURRAY KATZ Filed Endorsed Memorandum on Order to Sho filed2-9-76--Application is granted the respondent is di to report to the U.S. Atty.'s office forthwith for the pur setting a mutually agreeable date on which he is to resp the summons dated 6-27-76. MOTLEY,J.
Feb. 11-76	USA -v- SANDERS BELVIN,JR. Filed Endorsed Memorandum on Order Show Cause filed 2-9-76--Petition granted.Submit order on days notice. MOTLEY,J.
Feb. 11-76	USA -v- CHARLES BARNES-Fil Marshal's return on copy of Ord filed 12-29-75--execut d.
Feb. 13-76	USA,et al -v- GEOFFREY DAVI Filed Notice of Appeal of Order on 12-18-75,ruling upo petitioner's application for enfo ment of an IRS summons m/n to Grubbs,Ely & Donovan,2 27 Cedar St.,N.Y.,N.Y. 10038.
Feb. 13-76	USA -v- MURRAY KATZ Filed O der dated 2-12-76 that respondent fully with IRS summons by appearing at the office of the 120 Church St.,N.Y.,N. 10008,9th Fl. Group 21,before Re Agent James F. Murphy on 2-17-76 at 10:00 A.M.--failure t with this order may subject the respondent to a charge of of court. MOTLEY,J.
Feb. 17-76	USA,et al -v- GEOFFREY DAVI Filed Affdvt. of Filing of Not Appeal filed on 2-13-76 by Pauline P. Trese.
Feb. 20-76	USA,et al -v- GEOFFREY DAVI Filed Notice of Appeal from Order on 12-22-75,insofar as it directs respondent to prepare a vec to the IRS duplica copies of specified computer tap m/n: Thomas J. Cahill, U.S.Atty..S.D.N.Y.; Paul H. Silvera U.S. Courthouse Annex, One St. Andrew's Plaza,N.Y.,N.Y.10
Feb. 20-76	USA -v- ARNOLD E. SCHULMAN- led Order dated 2-20-76--that res comply fully with IRS mmons by appearing at the office IRS at 2467 Jerome Ave ,Bx.,N.Y. 10468,4th Fl.,Group 35 a A.M.--failure to comply with this Order may subject the r dent to a charge of co tempt of court. WARD,J.

D. C. 110 Criminal Continuation Sheet

DATE	PROCEEDINGS
Feb. 25-76	USA -v- THOMAS NADELWAYS-Filed Affdvt. and Order to Show Cause for an Order to compel respondent to comply fully with the summons served upon him on 8-13-75 -ret. 3-9-76 at 10:30 A.M. in Rm.505.-Conley,J.
Feb. 25-76	USA -v- THOMAS NADELWAYS-Filed Govt.'s Memorandum of Law.
Feb. 25-76	USA -v- ARNOLD S. SCHULMAN-Filed Govt.'s Affdvt. of Mailing of copy of Order of Judge Ward, filed on 2-20-75 to Arnold S. Schulman.
Feb. 27-76	USA -v- ARNOLD S. SCHULMAN-Filed Govt.'s Notice of Entry of Order in the office of the Clerk of this Court on 2-20-76.
Mar. 5-76	USA -v- ALVIN G. ROMES Filed Order to Show Cause to compel respondent fully testify and produce the records demanded in the IRS summons served upon him on 8-5-74 by the petitioner, David Rosenberger. Conley,J.
Mar. 5-76	USA -v- ALVIN G. ROMES-Filed Govt.'s Memorandum of Law.
Mar. 9-76	USA -v- SANDERS BELVIN,JR.-Filed Order dated 3-8-76 ordered that Sanders Belvin,Jr. fully comply with the summons by appearing the office of the IRS at 2467 Jerome Ave.,Bx.,N.Y.,4th Fl. before a venue Agent Irving Morris on 3-22-76 at 10:00 A.M. failure to comp with this order may subject respondent to a charge of contempt of Court. Conley,J.
Mar. 10-76	USA -v- THOMAS NADELWAYS-Filed Proposed Memorandum on Marshal's return on Order to Show Cause filed 2-25-76-Motion granted on default. Submit order on 10 days notice. So Ordered. Pollack,J.
Mar. 11-76	USA,et al -v- GEOFFREY DAVEY-Filed letter from AUSA Paul J. Silverman to Judge Duffy dated 9-29-75-requesting that if respondent's request is not totally denied, the Court fix 10-15-75 as the date on which respondent's papers must be served and filed, and 10-15-75 as the hearing date on the Order to Show Cause.
Mar. 11-76	USA,et al -v- GEOFFREY DAVEY-Filed letter dated 3-22-76 from Alan J. Rockler, Atty for respondent to Judge Duffy--requesting an extension of hearing date for 10-7-75 to 10-20-75.
Mar. 11-76	USA,et al -v- GEOFFREY DAVEY-Filed Reply Memorandum on behalf of the Respondent.
Mar. 11-76	USA,et al -v- GEOFFREY DAVEY-Filed letter dated 11-17-75 from AUSA Paul J. Silverman to Judge Duffy--urging enforcement of the involved summons.
Mar. 11-76	USA,et al -v- GEOFFREY DAVEY-Filed Memorandum of Points and Authorities in Support of Respondent's Proposed Form of Judgment.
Mar. 11-76	USA,et al -v- GEOFFREY DAVEY-Filed letter dated 12-15-75 from AUSA Paul J. Silverman to Judge Duffy--requesting that the summons be completely complied with.

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75-0963

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- -x

UNITED STATES OF AMERICA and WALTER ROSS, Revenue Agent, Internal Revenue Service,

Petitioners,

- v -

GEOFFREY DAVEY, As Secretary of THE CONTINENTAL CORPORATION,

Respondent.

- -x

ORDER TO SHOW CAUSE

M18-304

NOTICE: THIS IS A COURT ORDER WHICH REQUIRES YOU TO APPEAR IN PERSON IN ROOM 506, UNITED STATES COURT HOUSE, FOLEY SQUARE, NEW YORK, NEW YORK 10007 AT 10:30 A.M. ON October 7, 1975

Upon the application of Paul J. Curran, United States Attorney for the Southern District of New York, attorney for petitioners, the annexed affidavits and the exhibits annexed thereto, and the memorandum of law filed herewith, it is hereby

ORDERED, that the above-named respondent show cause before this Court at the time and place set forth above, or as soon thereafter as counsel can be heard, why he should not be ordered to comply fully with the Summons duly issued by the Internal Revenue Service and served on him, and why the United States should not be awarded costs and disbursements of this action and such other relief as is just; and all affidavits, exhibits, or memorandum of law on behalf of respondent, if any, shall be filed on or before 5 business days prior to the date set forth above, and it is further,

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ORDERED, that personal service of a copy of this order, together with the annexed affidavits and exhibits, and the memorandum of law filed herewith, upon the respondent, by the United States Marshal, or in the alternative, by the District Director of the Internal Revenue Service or his authorized officer or agent, on or before September 19, 1975, shall be deemed sufficient.

Dated: New York, New York

September 16, 1975

/s/ Kevin T. Duffy
United States District Judge

PHS:mkb
d-963

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA and WALTER ROSS, Revenue Agent, Internal Revenue Service,	:	APPLICATION FOR ORDER TO SHOW CAUSE
Petitioners,	:	
- v -	:	
GEOFFREY DAVEY, As Secretary of THE CONTINENTAL CORPORATION,	:	
Respondent.	:	

1. The United States of America, and Walter Ross, Revenue Agent, Internal Revenue Service, by their attorney Paul J. Curran, United States Attorney for the Southern District of New York, hereby respectfully make application for an order to show cause why the above-captioned respondent should not be ordered to comply fully with the summons duly issued on him, and why the United States should not be awarded the costs and disbursements of this action and such other relief as is just.

2. This application is made pursuant to Title 26, United States Code, Sections 7402 and 7604, to compel respondent to obey the mandate contained in the specified Internal Revenue Summons ("Summons"). A true and accurate copy of the summons to be enforced is attached hereto as Exhibit "A" and is thereby made a part hereof.

3. The respondent's office is located at 80 Maiden Lane, New York, New York 10038, within the Southern District of New York.

PhS:mkb
d-963

4. By reason of the default or disobedience of the respondent as fully set forth in the attached affidavits of Agents Ross and Rosenberg, petitioners have been hindered and delayed in the assessment and collection of federal taxes in violation of the law.

5. No previous application has been made for the relief sought in this application.

WHEREFORE, The United States of America, petitioner, respectfully requests the issueance of an order directing the respondent to obey the mandate contained in the Internal Revenue Summons duly and properly issued and served upon him and now sought to be judicially enforced, together with costs and disbursements and such other relief as is just in this proceeding.

Dated: New York, New York
September 16, 1975

Respectfully submitted,

PAUL J. CURRAN
United States Attorney for the
Southern District of New York
Attorney for Petitioners.

By: Paul H. Silverman
PAUL H. SILVERMAN
Assistant United States Attorney
Office and Post Office Address:
One St. Andrew's Plaza
New York, New York 10007
Telephone: (212) 791-1993

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PHS:lm

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA and WALTER ROSS, Revenue Agent, Internal Revenue Service,

Petitioners,

-v-

GEOFFREY DAVEY as Secretary of THE CONTINENTAL CORPORATION,

Respondent.

AFFIDAVIT

STATE OF NEW YORK)
COUNTY OF NEW YORK : ss.:
SOUTHERN DISTRICT OF NEW YORK)

WALTER ROSS, being duly sworn, deposes and says:

1. I am a Revenue Agent employed by the Internal Revenue Service (the "Service") and make this affidavit in support of the application of the United States of America to enforce the Internal Revenue Service Summons which I served upon the captioned respondent, on January 7, 1975, to obtain machine sensible data, (computer tapes), heretofore refused me by the respondent. See, a copy of the summons attached hereto as Exhibit "A".

2. Continental Corporation and its subsidiaries, taxpayer herein, is a multi-million dollar diversified conglomerate of several companies, essentially involved in in the insurance and lending business fields, which files a consolidated tax return, and as such is considered a large case, continuously audited by the Service.

FHS:lm

3. On June 19, 1973 I was assigned to the civil corporate income tax audit of the Continental Corporation and its subsidiaries ("Continental Corp.") to determine its correct tax liability for calendar year 1971.

4. On November 17, 1973, pursuant to standard Service procedure, Continental Corp., through its tax counsel William F. Gleason, Jr., was extended a copy of the Service's large case audit plan (the "Plan"), which informed Continental of the manner in which the audit would be conducted. The Plan had been drafted over a period of several months to meet the particular needs of the Continental Corp. audit.

5. On November 27, 1973, I held a meeting with above respondent, Geoffrey Davey, the Vice President and Secretary, and with William F. Gleason, Jr., Vice President, Assistant Secretary and Tax Counsel, both of Continental Corp., and Revenue Agent Rosenberg, a Service computer audit specialist, for the purpose of securing the agreement of Continental Corp. to arrange access to needed computer tapes which were an integral part of Continental Corp.'s financial records.

6. Computer Audit Specialist Rosenberg advised me of a prior meeting for the same purpose, held on February 13, 1973, at which time Mr. Gleason said that Continental did not want to allow I.R.S. access to Continental Corp. computer tapes because the I.R.S. could do a more thorough and quicker tax audit which would be to

the disadvantage of Continental Corp. I was advised that Mr. Gleason further stated that the harder it is for the I.R.S. to dig out information, the more discouraged the I.R.S. agents would become, and therefore less auditing would be accomplished.

7. At the November 27, 1973 meeting I submitted an Information Document Request for the computer tapes to Norman Swanson, Superintendent of the Tax Department of Continental Corp. I was not given a definite answer to my request. See, Exhibit "B", attached hereto.

8. When, on December 12, 1973, I was assigned the Continental Corp. tax audit for calendar tax year period 1972; the 1971 and 1972 audits were coordinated and worked simultaneously.

9. On February 7, 1974 a second request was made for the computer tapes concerning the 1971 audit. In addition, I submitted an Information Document Request for the computer tapes concerning the 1972 audit. Still, I received no definite responses to my requests. See, Exhibit "C", attached hereto.

10. On March 21, 1974 a third request was made for the computer tapes concerning the 1971 audit, to no avail. See, Exhibit "D", attached hereto.

11. On April 30, 1974 a second request was made for the computer tapes concerning the 1972 audit, to no avail. See, Exhibit "E", attached hereto.

PES:lm

12. On June 12, 1974 Mr. Gleason, advised me that Continental Corp. would not comply with the Service request for computer tapes. Mr. Gleason said Continental Corp. took the position that tapes do not have to be furnished for Service examination in that they are not books and records of the corporation. I took issue with Continental Corp.'s position because, if for no other reason, Rev. Rul. 71-20, 1971-I Cumm. Bull. 392, specifically states that magnetic tapes used for recording, consolidating and summarizing accounting transactions and records within a taxpayer's automatic data processing system are records within the meaning of Section 6001 of the Internal Revenue Code and Section 1.6001-1 of the Internal Revenue Regulations, and as such are required to be retained as long as the contents may become material in the administration of any Internal Revenue law. In addition, I took issue with the position of Continental Corp. as regards other requests for information which went unanswered for several months thereby interfering with the normal audit process.

13. It is most difficult to give credence to the aforesaid position of Continental Corp. with regard to the computer tapes in that it completely disregards the prime concern that the computer tapes are "books and records" that contain financial data of Continental Corp. both relevant and material to Service audit and that Continental Corp. as a taxpayer cannot restrict the Service audit of itself to records of its own selection.

14. In the belief that Continental Corp. would reconsider and change its arbitrary aforestated position in the face of an Internal Revenue Summons, on January 7, 1975 I issued and served a Summons in the matter of the tax liability of Continental Corp. for tax year periods 1971 and 1972. The summons was issued to and served on Geoffrey Davey, as Secretary of Continental Corp., to appear on January 28, 1975 and to bring with him "All Machine-Sensible Data Media used for recording, consolidating or summarizing accounting or financial transactions and records in respect of general expenses and losses expended or incurred during the years 1971 and 1972, including but not limited to Magnetic Tape number 110101 and Magnetic Tape Number 421001, for each year respectively. A copy of said summons is attached hereto as Exhibit "A". When I served the summons I informed Mr. Davey that for his convenience the summons could be satisfied at Continental Corp. offices rather than at the Service.

15. On January 27, 1975 Mr. Gleason and other tax counsel of Continental Corp. held a conference with me concerning another aspect of the audit. During the conference Mr. Gleason stated that, to date, no conclusion had been reached by Continental Corp., as to whether or not it would honor the summons concerning the computer tapes.

16. On January 28, 1975, the summons return date, Mr. Davey did not appear. Henry P. Winetsky of Continental Corp. appeared, stated that he was appearing in the place of Mr. Davey, that Continental Corp. was resisting the summons in regard to the computer tapes, and then, before leaving without complying with the summons, Mr. Winetsky handed a letter to me from Mr. Davey, dated January 27, 1975. In the letter, for the first time Continental Corp. amplified its reasons for intentionally not complying with the Internal Revenue Summons. A copy of said letter is attached hereto as Exhibit "F".

17. In brief, Continental Corp. has refused to turn over primary source tapes on the basis that the turnover would be unduly burdensome and that they have already suggested that the Service be satisfied with an audit of the voluminous secondary printout records created from the source tapes in a form not suitable to the audit. In fact, the Service is ready to assume the burden of running the computer tapes and in fact Continental Corp.'s suggestion to restrict the Service examination to only voluminous secondary records and to unilaterally prohibit the Service from examining high-speed, efficient and most important primary source computer tapes which constitute the books and records of the corporation can only be viewed as a brazen effort to interfere, hinder, delay, and thwart a proper Service examination and audit.

FMS:lm

18. The summoned machine sensible data are necessary to determine the proper income tax liabilities of Continental Corporation and its subsidiaries. It was and is my belief that if the tax audit is allowed to continue without interference the audit may be completed and resolved in a minimal length of time.

s/
WALTER ROSS

Sworn to before me this
16th day of September , 1975.

Form 2039
(Rev. Oct. 1969)

SUMMONS

A 18

Department of the Treasury
Internal Revenue Service

In the matter of the tax liability of

The Continental Corporation and its Subsidiaries

Internal Revenue District of Manhattan

Period(s) Income Tax for Calendar Years 1971 & 1972

The Commissioner of Internal Revenue

To Geoffrey Davey, as Secretary of The Continental Corporation

At 80 Maiden Lane, New York, N.Y. 10038

Greetings: You are hereby summoned and required to appear before

Walter Ross

an officer of the Internal Revenue Service, to give testimony relating to the tax liability or the collection of the tax liability of the above named person for the period(s) designated and to bring with you and produce for examination the following books, records, and papers at the place and time hereinafter set forth:

All Machine-Sensible Data Media used for recording, consolidating or summarizing accounting or financial transactions and records in respect of general expenses and losses expended or incurred during the years 1971 and 1972, including but not limited to Magnetic Tape number 110101 and Magnetic Tape number 421001, for each year respectively.

Place and time for appearance:

at 120 Church Street, New York, N.Y. Room 1610-G

on the 28th day of January, 19 75 at 10:00 o'clock A.M.

Failure to comply with this summons will render you liable to proceedings in the district court of the United States or before a United States commissioner or magistrate to enforce obedience to the requirements of this summons, and to punish default or disobedience.

Issued under authority of the Internal Revenue Code

this 7 th day of January, 19 75

Original

Walter Ross
Signature

Internal Revenue Agent
Title

Form 2039 (Rev. 10-69)

EXHIBIT "A"

Certificate of Service of Summons

(Pursuant to Section 7603, Internal Revenue Code) A 19

I certify that I served the summons shown on the front of this form on:

Date	Time
January 7, 1975	9:40 A M

How Summons Was Served

☑ I handed an attested copy of the summons to the person to whom it was directed,

☐ I left an attested copy of the summons with the following person at the last and usual place of abode of the person to whom it was directed

Signature	Title
W. E. Ross	Internal Revenue Agent

Sec. 7603

Service of Summons

A summons issued under section 6420(e)(2), 6421(g)(2), 6424(d)(2), or 7602 shall be served by the Secretary or his delegate, by an attested copy delivered in hand to the person to whom it is directed, or left at his last and usual place of abode, and the certificate of service signed by the person serving the summons shall be evidence of the facts it states on the hearing of an application for the enforcement of the summons. When the summons requires the production of books, papers, records, or other data, it shall be sufficient if such books, papers, records, or other data are described with reasonable certainty.

BEST COPY AVAILABLE

A 20

FORM 4564 (OCT. 1969)

DEPARTMENT OF THE TREASURY - INTERNAL REVENUE SERVICE

INFORMATION DOCUMENT REQUEST

DATE(S) OF PREVIOUS REQUEST(S)

TO (Name of Taxpayer, Company Division or Branch)

SUBJECT

1971 Tax

SPECIFIC DESCRIPTION OF ITEM(S) REQUESTED

Please furnish the following tapes for 1971.

1 Basic (total monthly)

Fab # of magnetic tape 421,491

2 Premium Tape Not Used

Please return Part II of this form with requested items to the Internal Revenue representative whose name and office location appear below.

FROM REQUESTER'S NAME AND TITLE

DATE 11/22/72

OFFICE LOCATION

FORM 4564 (10-69)

REQUESTER'S FILE COPY

EXHIBIT "3"

BEST COPY AVAILABLE

2nd Request 2/7/74

A-21

FORM 4564 (OCT. 1969)

DEPARTMENT OF THE TREASURY - INTERNAL REVENUE SERVICE

INFORMATION DOCUMENT REQUEST

DATE(S) OF PREVIOUS REQUEST(S) 11/27/73

TO (Name of Taxpayer, Company Division or Branch)

SUBJECT

SPECIFIC DESCRIPTION OF ITEM(S) REQUESTED

Please return Part II of this form with requested items to the Internal Revenue representative whose name and office location appear below.

FROM REQUESTER'S NAME AND TITLE

DATE

OFFICE LOCATION

FORM 4564 (10-69)

REQUESTER'S FILE COPY

EXHIBIT "C"

BEST COPY AVAILABLE

A 22

FORM 4564 (OCT. 1969)

DEPARTMENT OF THE TREASURY - INTERNAL REVENUE SERVICE

INFORMATION DOCUMENT REQUEST

DATE(S) OF PREVIOUS REQUEST(S)

TO (Name of Taxpayer, Company Division or Branch)
Continental Insurance Cos
Sub Companies
Attn: Mr. Sullivan Supt T/P Dept

SUBJECT
1171 & 1172 T/P Examination

SPECIFIC DESCRIPTION OF ITEM(S) REQUESTED

1. Agent's type number 10-21-01 for general expenses for the years 1172.
2. Analysis of retrospective rate credits for 1171 & 1172 and "run off" of retros to date of examination
3. Regulation 1.832-4(b) states that a reasonable method be used rather than an estimated amount on Losses IBNR in Fidelity & Surety lines. Please submit a development of IBNR for these lines for 1171 and 1172 based on a reasonable method.

Please return Part II of this form with requested items to the Internal Revenue representative whose name and office location appear below.

FROM
REQUESTER'S NAME AND TITLE: Walter Ross Jr. Internal Revenue Agent
DATE: 2/7/74
OFFICE LOCATION: Manhattan

FORM 4564 (10-69)

REQUESTER'S FILE COPY

2nd Request 2/7/74
3rd Request 3/21/74

FORM 4564 (OCT. 1969)

DEPARTMENT OF THE TREASURY - INTERNAL REVENUE SERVICE

INFORMATION DOCUMENT REQUEST

DATE(S) OF PREVIOUS REQUEST(S) 11/27/73

TO (Name of Taxpayer, Company Division or Branch)

SUBJECT

SPECIFIC DESCRIPTION OF ITEM(S) REQUESTED

Please return Part II of this form with requested items to the Internal Revenue representative whose name and office location appear below.

FROM REQUESTER'S NAME AND TITLE

DATE

OFFICE LOCATION

FORM 4564 (10-69)

REQUESTER'S FILE COPY

EXHIBIT "F"

2nd Request 4/20/74

A 24

FORM 4564 (OCT. 1969)

DEPARTMENT OF THE TREASURY - INTERNAL REVENUE SERVICE

INFORMATION DOCUMENT REQUEST

DATE(S) OF PREVIOUS REQUEST(S)

TO (Name of Taxpayer, Company Division or Branch)

Continental Insurance Cos
Stock Companies
Attn: Thurston Supt Typist

SUBJECT

1971 & 1972 Taxable Income

SPECIFIC DESCRIPTION OF ITEM(S) REQUESTED

Please return Part II of this form with requested items to the Internal Revenue representative whose name and office location appear below.

1. Agent's typ number 11 [illegible] for general expenses for the year 1972.

2. Analysis of retrospective rate credits for 1971, 1972 and run off of retros to date of examination

3. Regulation 1.832-4(b) states that a reasonable method be used rather than an estimated amount in deriving LANE as Fidelity & Surety Lines. Please submit a development of LANE for these lines for 1971 and 1972 based on a reasonable method.

FROM: REQUESTER'S NAME AND TITLE — W. [illegible] Revenue Agent — DATE 2/7/74

OFFICE LOCATION — Norfolk

FORM 4564 (10-69)

REQUESTER'S FILE COPY

EXHIBIT "B"

A · 25



THE CONTINENTAL CORPORATION

EIGHTY MAIDEN LANE.
NEW YORK, N.Y. 10038

January 27, 1975

Revenue Agent Walter Ross
120 Church Street
Room 1610-G
New York, New York

Dear Sir:

We have received the summons, issued by you, dated January 7, 1975, ordering Mr. Geoffrey Davey, Secretary of the Continental Corporation (the "Company") to appear at your office on January 28, 1975 at 10:00 a.m. and to produce

> "All Machine-Sensible Data Media used for recording, consolidating or summarizing accounting or financial transactions and records in respect of general expenses and losses expended or incurred during the years 1971 and 1972, including but not limited to Magnetic Tape number 110101 and Magnetic Tape number 421001, for each year respectively."

For the following reasons, among others, we are unable to comply with your summons with respect to Machine-Sensible Data Media:

As we have previously informed you, the computer tapes that you have summoned relating to the general expenses

for 1971 were prepared solely for the creation of a printout and accordingly were erased pursuant to the retention system that had been established by the Company for records of this type (45 days).*/ This erasure, of course, occurred several years before the issuance of the present summons and prior to any request (informal or otherwise) by you or any other agent of the Internal Revenue Service to obtain these tapes.

Relying on advice of counsel, we respectfully decline to produce the remainder of the listed materials on the ground that your summons exceeds the statutory grant of authority contained in Code Section 7602 and is otherwise objectionable under applicable law. Production of the tapes listed in your summons would be unjustifiably burdensome and expensive for the Company, expecially in light of the fact that the information contained on the summoned tapes is, and at all times has been, available upon request for your inspection in the form of bound volumes of the printouts of the tapes in question. Cf. United States v. Matras, 487 F.2d 1271 (8th Cir. 1973); United States

*/ The practices of the Company with respect to the automatic erasure of tapes following the expiration of the applicable retention period were modified in light of Revenue Procedure 71-20, 1971-1 Cum. Bull. 392, but due to an internal misunderstanding at the time of its implementation this modification did not prevent erasure of the 1971 general expenses tapes.

v. First National Bank of Fort Smith, 173 F. Supp. 716 (W.D. Ark. 1959). We note that we have provided to you, and you have been permitted to examine at length and to whatever extent you desired, any and all of the bound volumes of printouts that you have requested from time to time.

The Internal Revenue Code authorizes the Service to examine the books and records of a taxpayer with a view to determining the taxpayer's tax liability. I.R.C. Sec. 7602. Under the pertinent regulations and rulings, it appears that the materials which you seek to summon are "secondary" materials, while the printouts which have been made available to you are "primary" materials.*/ Thus, under Revenue Procedure 64-12, 1964-1 Cum. Bull. (Pt. 1) 672, the Service made it clear that the purpose of its so-called ADP Guidelines was to assure the availability of "visible and legible records," which would provide requisite verifying authority on audit. The emphasis of these Guidelines was on the end product to be produced for examination, i.e., "visible and legible" records--not on the punch cards or magnetic tapes or disks used to produce the visible and legible records. Cf. I.T. 3866, 1947-2 Cum. Bull. 68 (permitting microfilm to be

*/ The printouts constitute ledgers and journal records of the Company, on the basis of which financial statements and Federal income tax returns are prepared.

used as a substitute for original records, but in no way favoring the use of microfilm). In a recent decision, the Court of Appeals for the Eighth Circuit has strongly suggested that the Service is not entitled to rummage through secondary records, at least where primary records have been made available. United States v. Matras, 487 F.2d 1271 (8th Cir. 1973).

Additionally, you have failed to prove that the information sought in this summons is not already in your possession as a result of your extensive examinations of the aforementioned bound volumes, and thus you have not satisfied the essential conditions for the issuance of an enforceable summons. United States v. Powell, 379 U.S. 48 (1964); United States v. Pritchard, 438 F.2d 969 (5th Cir. 1971); United States v. Fordin, 1972-2 U.S.T.C. Par. 9618 (E.D.N.Y. 1972). Nor have you complied with the notice and necessity requirements set forth in Code Section 7605(b) as pre-conditions to a second inspection of the Company's books of account. United States v. Fordin, 1972-2 U.S.T.C. Par. 9618 (E.D.N.Y. 1972).

Finally, the place of examination designated by you is unreasonable in light of the kinds of materials sought to be summoned, and the summons thus violates Code Section 7605(a).

Henry P. Winetsky, Assistant Secretary of The Continental Corporation, and Tax Counsel to The Continental Insurance Companies,

is hereby authorized to appear and act in my place and stead with respect to the summons.

Respectfully submitted,

Geoffrey Davey
Vice President & Secretary

GD/gs

PHS:lm

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------X

UNITED STATES OF AMERICA and :
WALTER ROOS, Revenue Agent, :
Internal Revenue Service, : AFFIDAVIT

Petitioners, :

-v- :

GEOFFREY DAVEY, as Secretary :
of THE CONTINENTAL CORPORATION, :

Respondent.

----------X

STATE OF NEW YORK)
COUNTY OF NEW YORK : ss.:
SOUTHERN DISTRICT OF NEW YORK)

EDWARD C. ROSENBERG, being duly sworn, deposes and states:

1. I am a Revenue Agent, Computer Audit Specialist, employed by the Internal Revenue Service (the "Service") and make this affidavit in support of the application of the United States of America to enforce the Internal Revenue Service summons served by Revenue Agent Walter Roos upon the captioned respondent on January 7, 1975 to obtain machine sensible data (computer tapes) heretofore refused by the respondent.

2. Since 1972, I have been assigned to assist large case audits which require the expertise that I have been taught and practice. Pursuant to current internal office directives every large case audit must include the use of a Computer Audit Specialist.

FMS:lm

3. Continental Corporation and its subsidiaries, taxpayer herein, is a multi-million dollar diversified conglomerate of several companies, essentially involved in the insurance and leading business fields, which files a consolidated tax return, and as such is considered a large case, regularly audited by the Service.

4. On February 7, 1973 I was assigned to assist in the large case audit of Continental Corp..

5. To assistain the Continental Corp. audit I met with George Moore of INSCO Systems Corporation of Neptune, New Jersey. INSCO is the computer data processing affiliate of Continental Corp.. At this meeting the Continental Corp. financial computer system was outlined as follows.

6. Continental Corp. includes various property and casualty insurance subsidiaries which are referred to by the taxpayer as "the Continental Insurance Companies". The Continental Insurance Companies' division of the Continental Corp. maintains a departmental accounting system, by geographic region, which operates out of eight separate regional offices, each office being responsible for a defined geographical region.

7. The financial and accounting record keeping system of the Continental Insurance Companies is committed to the use of computers, i.e., machine-sensible data.

PHS:lm

8. For convenience of discussion attached to this affidavit as Exhibit "1" is a typical flow chart worksheet, relating to accounts payable. This model worksheet generally reflects the accounting process of a vendor's invoice through computer system such as that of Continental Corp. to obtain the pre-set print-outs, which Continental Corp. would now have the Service limit its examination. Also attached hereto is Exhibit 2, which represents a typical vendor invoice; Exhibit 3, which represents a typical accounts payable voucher, and Exhibit 4, which represents the pre-set printed output entitled, "Expense Detail Listing".

9. In brief, Continental Corp. will not allow the Service the use of the computer tape which embodies the "raw" information. Rather, Continental has offered to provide the Service only with pre-set print-outs, as for example, a "Monthly Expense Detail Listing" print-out. This print-out listing is bound in quarterly or annual time periods by each of the eight aforesaid Regions of Continental Insurance Companies; and it is further broken down by "cost centers", i.e., department, division, unit (see Exhibit "4" attached). The expense listing printout embodies three different ledger accounts: Underwriting Expense (Acct. 541); Investment Expense (Acct. 542); and Real Estate Expense (Acct. 551). Each monthly listing print-out averages a total of 75 pages. There are 96 separate monthly listing print-outs per year. Each page of said print-out consists of approximately sixty lines of information.

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10. The aforesaid pre-set print-outs are insufficient and ineffective to meet particular needs of the Service during its audit of Continental Corp. The essence of the inappropriateness of the print-outs is that they were prepared for particular managerial purposes of Continental Corp., which purposes are not identical to those of the Service.

11. Limiting the Service to the pre-set print-outs denies the Service the opportunity to verify that it is, in fact, analyzing complete records. In fact, the aforesaid Expense Listing pre-set print-out of Continental Corp., does not include all the expense items of Continental. For example, brokerage and commission expenses and payroll expenses are not included in the pre-set printout.

12. In addition, the pre-set print-outs offered by Continental Corp. do not reflect expenses in a format similar to the expense deductions reflected on either Continental Corp.'s tax returns, or on Continental Corp.'s financial Convention Statement as filed with the Insurance Department of the State of New York. The needed information is not displayed by classification of expense and therefore the total amount of a particular class of expense is unavailable to the Service. At present, to determine the total amount of a particular class of expense, the Service must add each individual classified item from the one related object class from each page of each of the ninety-six volumes of print-out. This method does not assure completeness.

FHS:lm

13. By preventing Service use of Continental Corp. financial and accounting computer tapes, the Service is impeded from verifying whether or not a particularly large expense invoice had been fragmented among many cost centers or departments, in order to make the pre-set print-out inaccurately reflect only a nominal amount of expense for each of the many credited departments.

14. With use of the computer tapes of Continental Corp. the Service will be able to produce an appropriate audit print-out containing the relevant fields of information in a format upon which the Service can effectively administer its tax audit, e.g., a total list of payments made to a particular employee, officer, or officers of the taxpayer.

15. The pre-set print-outs are embodied in over one hundred volumes. Use of the computer tapes will allow the Service to effectively and efficiently audit the taxpayer by conducting a scientifically sound test sample in a minimum amount of time. On the other hand, refusal to cooperate by Continental Corp. compels the Service to conduct a tedious, time consuming, and unreliable "eye ball" audit of the voluminous bound volumes.

16. I recall a new pertinent observation made to me in 1973 by Mr. Gleason, Vice President, Assistant Secretary and Tax Counsel of Continental Corp., Mr. Gleason stated that he did not want to let the Internal Revenue

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Service have access to its companies' tape, because the Service could then do a more thorough, and quicker tax audit which would be to the disadvantage of Continental Corporation. He also stated that the harder it is for the Revenue agent to dig out the information the less auditing would be accomplished. Mr. Gleason's comments were perceptive and aptly stated in light of the need for the present application to the Court.

17. I must point out that the foresaid discussion has only concerned the "Expense" computer tape information. The summons in question also seeks "Losses Paid" computer tape information which has not been complied with in any manner by the taxpayer.

18. The Service is desirous of working with Continental Corp. to determine a reasonable manner in which the Service can take possession of the relevant computer tapes, which are necessary to determine the tax liabilities of this taxpayer from a practical standpoint, the computer tapes are few in number and small in physical size, making their transportation cost very reasonable. Each reel of computer tape is approximately 18 inches in diameter. 1/2 inch thick, weighing approximately 3 pounds. However, the Service is prepared to take it upon itself to transport the computer tapes, if that is necessary. I am also willing to work with the original computer tapes at Continental Corp. computer facilities, now located in Neptune, New Jersey. If Continental would prefer, I am willing to make

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FHS:lm

and work with duplicate original tapes off the Continental Corp. premises and at Service computer facilities.

/s/
EDWARD C. ROSENBERG

Sworn to before me this

16th day of September, 1975.

PATRICK H. BARTH
NOTARY PUBLIC, STATE OF NEW YORK
No. 24-4526297
Qualified in Kings County
Certificate filed in New York County
Commission Expires March 30, 1976

FLOW CHARTING WORKSHEET - ACCOUNTS PAYABLE

A 37

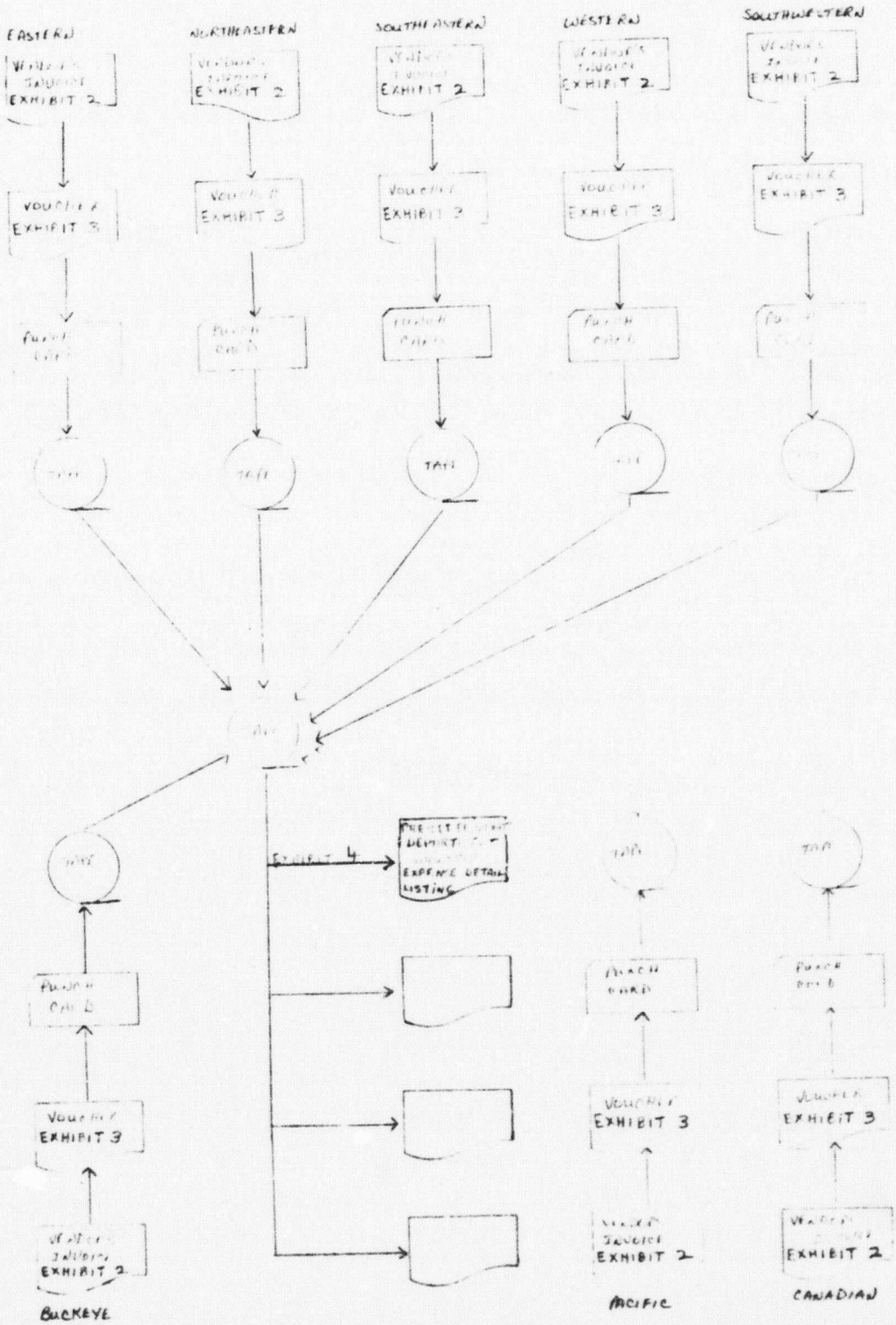


Exhibit " 1 "

A 38

11/27/71

TEMENT

THE CONTINENTAL INSURANCE COMPANIES

~~80 MAIDEN LANE, NEW YORK, NEW YORK 10038~~

~~NEWARK, NEW JERSEY 07101~~

P.O. Box 385, Glen Falls, N.Y. 12801

TO Credit & Adjustment Bureau, Inc.
100 William Street
New York, N.Y. 10038

(FOLD)

DATE	NUMBER	NAME	PREMIUM	
Nov '71				
		Int. & Cost of Collection		1,74.2.12
		10-27-71 to 11-27-71		

Printed in U.S.A.

S-Accts. 1057B

EXHIBIT "2"

A 39

PAY TO:

Fulton Adjustments Bureau Inc.
150 William Street
New York, N.Y. 10038

ACCOUNTS PAYABLE VOUCHER

TRANS. CODE (CC-2)	INCURRED MO.	YR.	CO. CODE (CC53-54)	VOUCHER NO. (CC 4-8)
3	12-	71		12-35

DATE PREPARED	CHECK NUMBER (CC9-11)	CHECK DATE (CC12-14)
11/29/71	010541	DEC 3 1971

EXPENSE CODING BLOCK

LEDG. ACCT. (CC-17)	CONV. CODE (CC-20)	OBJ. CLASS (CC-24)	# 30 EXPENSE G P (CC-25)	LINE (CC-27)	STATE PROV. (CC-29)	AMOUNT (44-52)	(CR-52)	LEDG. ACCT.	CONV. CODE (18-20)	OBJ. CLASS (32-34)	# 30 EXPENSE G P (CC-25)	LINE (40-41)	STATE PROV. (42)	AMOUNT (44-52)	(CR-52)
541	057	4-30				174.12									
541															
541															
541															
541															
541	Fees & Court Costs for														
541	the month of November 1971														
541															
541															
541															
541															
541															
541															
541															

PAID
DEC 1971
D.H. McALEN, Cashier

TOTAL 174.12

CONTROL CODE (CC-1) PREPARED BY: J. Simms

APPROVED FOR PAYMENT: [signature]

AUTHORIZED BY: [signature]

EXP. 54A

PRINTED IN U.S.A.

DEPARTMENTAL CASHIER

EXHIBIT "3"

EXPENSE DETAIL LISTING

JUNE 1971 — H/O-MET NYC-MIDDLE — PAGE 3

TYPE	VOUCHER NO	INCURRED YR	INCURRED MO	PAID YR	PAID MO	LEDG ACCT	CONV CODE	DEPT	DIVISION	SUB	LOC ACCT	FUNC CLASS	SUB FUNC CLASS	OBJECT CLASS	SUB OBJ CLASS	VALUE ACCT	LINE	STATE	C CODE OR EXPAC	MILES OR EST	GALS GAS		AMOUNT	OBJECT CLASS DESCRIPTION
3	061450	06	1			541	043	11	05	00020	24	03	460	23	150	99	00						494.34	OFFICE SUPPL
3	006114	06	1			541	043	11	05	00020	24	03	570	23	140	99	00						2,310.00	RENT OF EQUI
3	061200	06	1			541	043	11	05	00020	24	03	570	23	140	99	00						3,178.80	RENT OF EQUI
3	006128	06	1			541	043	11	05	00020	24	03	570	23	140	99	00						636.00	RENT OF EQUI
3	061491	06	1			541	043	11	05	00020	24	03	570	23	140	99	00						219.35	RENT OF EQUI
7						541	043	11	05	00020	24	03	621	23	401	99							4.00	TELEPHONE
3	006378	06	1			541	043	11	05	00020	24	03	670	23	090	99	00						11.18	UNIFORMS
																						CONV CODE TOTAL	8,658.89	
3	006218	06	1			541	044	10	02	00020	08	00	380	23	170	99	00						36,050.00	LEGAL & AUDI
7						541	044	10	02	00020	08	00	451	23	130	99							1,079.54	OFFICE RENT
7						541	044	10	02	00020	08	00	621	23	401	99							89.29	TELEPHONE
7						541	044	10	02	00020	08	00	621	23	401	99							4.05	TELEPHONE
3	006850	06	1			541	044	10	02	00020	08	00	640	23	160	99	00						6.59	TOLL CALLS
3	006850	06	1			541	044	10	02	00020	08	00	640	23	160	99	00						12.45	TOLL CALLS
3	006850	06	1			541	044	10	02	00020	08	00	640	23	160	99	00						7.95	TOLL CALLS
4	000634	06	1			541	044	10	02	00020	08	00	640	23	160	99	00						12.96CR	TOLL CALLS
3	006850	06	1			541	044	10	02	00020	08	00	640	23	160	99	00						6.30	TOLL CALLS
5		06	1			541	044	10	02	00020	08	00	662	23	120	99	00					179305568	32.70	PERSONAL AU
5		06	1			541	044	10	02	00020	08	00	662	23	120	99	00					154403327	12.24	PERSONAL AU
5		06	1			541	044	10	02	00020	08	00	664	23	120	99	00					091327671	722.04	SUBSISTENCE
5		06	1			541	044	10	02	00020	08	00	664	23	120	99	00					252096036	523.51	SUBSISTENCE
5		06	1			541	044	10	02	00020	08	00	664	23	120	99	00					119074808	689.51	SUBSISTENCE
5		06	1			541	044	10	02	00020	08	00	664	23	120	99	00					097209143	14.80	SUBSISTENCE
5		06	1			541	044	10	02	00020	08	00	664	23	120	99	00					047403997	601.43	SUBSISTENCE
5		06	1			541	044	10	02	00020	08	00	664	23	120	99	00					123058718	138.95	SUBSISTENCE
5		06	1			541	044	10	02	00020	08	00	664	23	120	99	00					155126428	60.42	SUBSISTENCE
5		06	1			541	044	10	02	00020	08	00	664	23	120	99	00					154403327	14.30	SUBSISTENCE
5		06	1			541	044	10	02	00020	08	00	664	23	120	99	00					144072966	363.50	SUBSISTENCE
5		06	1			541	044	10	02	00020	08	00	664	23	120	99	00					066100885	671.64	SUBSISTENCE
5		06	1			541	044	10	02	00020	08	00	664	23	120	99	00					179305568	687.21	SUBSISTENCE
5		06	1			541	044	10	02	00020	08	00	664	23	120	99	00					079467695	103.98	SUBSISTENCE
5		06	1			541	044	10	02	00020	08	00	664	23	120	99	00					091327671	177.20	TRANSPORTAT
5		06	1			541	044	10	02	00020	08	00	665	23	120	99	00					155126428	20.55	TRANSPORTAT
5		06	1			541	044	10	02	00020	08	00	665	23	120	99	00					123058718	114.05	TRANSPORTAT
5		06	1			541	044	10	02	00020	08	00	665	23	120	99	00					119074808	131.00	TRANSPORTAT
5		06	1			541	044	10	02	00020	08	00	665	23	120	99	00					097209143	72.85	TRANSPORTAT
5		06	1			541	044	10	02	00020	08	00	665	23	120	99	00					066100885	129.25	TRANSPORTAT
5		06	1			541	044	10	02	00020	08	00	665	23	120	99	00						198.00CR	TRANSPORTAT
0	000650	06	1			541	044	10	02	00020	08	00	665	23	120	99	00					252096036	113.50	TRANSPORTAT
5		06	1			541	044	10	02	00020	08	00	665	23	120	99	00					047403997	243.80	TRANSPORTAT
5		06	1			541	044	10	02	00020	08	00	665	23	120	99	00					179305568	121.95	TRANSPORTAT
5		06	1			541	044	10	02	00020	08	00	665	23	120	99	00					154403327	15.95	TRANSPORTAT
5		06	1			541	044	10	02	00020	08	00	665	23	120	99	00					079467695	26.50	TRANSPORTAT
5		06	1			541	044	10	02	00020	08	00	665	23	120	99	00					144072966	234.00	TRANSPORTAT
5		06	1			541	044	10	02	00020	08	00	665	23	120	99	00							
																						CONV CODE TOTAL	43,082.04	
7						541	045	05	03	05020	27	00	451	23	130	99							921.94	OFFICE RENT
3	006284	06	1			541	045	05	03	05020	27	00	550	23	150	99	00						191.01	PRINTED MATE
3	006283	06	1			541	045	05	03	05020	27	00	550	23	150	99	00						16.54	PRINTED MATE
3	006563	06	1			541	045	05	03	05020	27	00	550	23	150	99	00						51.00	PRINTED MATE
7						541	045	05	03	05020	27	00	621	23	401	99							6.65	TELEPHONE
						541	045	05	03	05020	27	00	621	23	401	99							156.27	TELEPHONE

A 40

Form 2039
(Rev. Oct. 1969)

SUBPOENA - 41

Department of the Treasury
Internal Revenue Service

In the matter of the tax liability of

The Continental Corporation and its Subsidiaries

Internal Revenue District of Manhattan

Period(s) Income Tax for Calendar Years 1971 & 1972

The Commissioner of Internal Revenue

To Geoffrey Davey, as Secretary of The Continental Corporation

At 80 Maiden Lane, New York, N.Y. 10038

Greetings: You are hereby summoned and required to appear before

Walter Ross

an officer of the Internal Revenue Service, to give testimony relating to the tax liability or the collection of the tax liability of the above named person for the period(s) designated and to bring with you and produce for examination the following books, records, and papers at the place and time hereinafter set forth:

All Machine-Sensible Data Media used for recording, consolidating or summarizing accounting or financial transactions and records in respect of general expenses and losses expended or incurred during the years 1971 and 1972, including but not limited to Magnetic Tape number 110101 and Magnetic Tape number 421001, for each year respectively.

Place and time for appearance:

at 120 Church Street, New York, N.Y. Room 1610-G

on the 28th day of January, 19 75 at 10:00 o'clock A.M.

Failure to comply with this summons will render you liable to proceedings in the district court of the United States or before a United States commissioner or magistrate to enforce obedience to the requirements of this summons, and to punish default or disobedience.

Issued under authority of the Internal Revenue Code

this 7th day of January, 19 75

Original

Walter Ross
Signature

Special Procedures Staff
Title

Form 2039 (Rev. 10-69)

Certificate of Service of Summons

(Pursuant to Section 7603, Internal Revenue Code)

I certify that I served the summons shown on the front of this form on:

Date	Time
January 7, 197-	9:40 A.M.

How Summons Was Served

☑ I handed an attested copy of the summons to the person to whom it was directed,

_____

_____

☐ I left an attested copy of the summons with the following person at the last and usual place of abode of the person to whom it was directed

_____

_____

Signature	Title
[illegible]	Internal Revenue Agent

Sec. 7603

Service of Summons

A summons issued under section 6420(e)(2), 6421(f)(2), 6424(d)(2), or 7602 shall be served by the Secretary or his delegate, by an attested copy delivered in hand to the person to whom it is directed, or left at his last and usual place of abode; and the certificate of service signed by the person serving the summons shall be evidence of the facts it states on the hearing of an application for the enforcement of the summons. When the summons requires the production of books, papers, records, or other data, it shall be sufficient if such books, papers, records, or other data are described with reasonable certainty.

Form 2039 (Rev.

UNITED STATES DISTRICT COURT A 43
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA AND WALTER ROSS, Revenue Agent, Internal Revenue Service, Petitioners, v. GEOFFREY DAVEY, As Secretary of THE CONTINENTAL CORPORATION Respondent.	OPPOSITION TO APPLICATION FOR SUMMONS ENFORCEMENT Docket No. M18-304

1. Mr. Geoffrey Davey, Respondent in the above-captioned matter, by his attorneys Walter J. Rockler and Edward T. Donovan, hereby respectfully opposes the Petitioners' application for an order compelling him to comply with an Internal Revenue Service summons dated January 7, 1975. A copy of this summons is attached as Exhibit A to Petitioners' application.

2. A memorandum of law and affidavits by Mr. William F. Gleason, Jr., and Mr. George L. Moore, in support of Respondent's position are attached.

WHEREFORE, Respondent respectfully requests that the Petitioners' application for summons enforcement be denied.

Dated: October 7, 1975

Respectfully Submitted

Walter J. Rockler
1229 19th Street, N.W.
Washington, D.C. 20036
Telephone: (202)872-6789

Edward T. Donovan
27 Cedar Street
New York, New York 10038
Telephone: (202)374-2327

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA and WALTER ROSS, Revenue Agent, Internal Revenue Service, Petitioners, v. GEOFFREY DAVEY, as Secretary of THE CONTINENTAL CORPORATION, Respondent.	AFFIDAVIT

STATE OF NEW YORK)
COUNTY OF NEW YORK : ss.:
SOUTHERN DISTRICT OF NEW YORK)

GEORGE L. MOORE, being duly sworn, deposes and states:

(1) I am Treasurer of The INSCO Systems Corporation, a computer firm which provides data processing services for The Continental Corporation, with which it is affiliated. I have more than 25 years' experience in the data processing and related fields, and during the years 1971 and 1972, was Manager of the group responsible for maintenance of Continental's general expense and loss data systems.

(2) This affidavit has been prepared for use in the above-captioned proceeding in which the Government is seeking to compel the production of Magnetic Tapes Number 110101 and 421001 which contain data on Continental's general expenses, losses and loss expenses paid.

(3) For accounting purposes, The Continental Insurance Companies are divided into eight geographic departments. Expense and loss information for each department is punched onto computer cards from the data contained on the original source documents, such as vouchers and invoices. The information on the cards is transferred to magnetic tapes in each department and the tapes are shipped to INSCO's Neptune Data Center, where tapes are produced nationwide.

(4) The function of the computer tapes is to produce legible monthly print-outs of the information recorded from the original invoices and vouchers as well as producing summary totals of the data. There is no information on the tapes which does not appear in the print-outs. The print-outs are a register of the detailed items which are prepared in a form that provides the support for reports required by state insurance department regulations. For example, the state regulations require Continental to classify and allocate its expenses as Underwriting Expenses, Investment Expenses, and Real Estate Expenses, and consequently the print-outs reflect the detail items that are later summarized into the mandatory classifications. Continental is required to prepare the Insurance Expense Exhibit annually in accordance with these regulatory accounting requirements.

(5) The monthly print-outs from the general expense tapes list all expenses of the group by "object class". For example, each legal expense, travel expense, etc., incurred during the month is separately listed. The print-outs also disclose the voucher number or other identifying information associated with the individual expenses. The vouchers and invoices, in turn, reveal the name of the particular payee and the number of the check by which payment was made.

(6) The cumulative totals of each "object class" are presented in monthly and year-to-date budget and expense statements. A typical budget and expense statement is attached as Exhibit 1 to this affidavit. The "object classes" are also regrouped and printed in the form of monthly and year-to-date Regulation 30 statements. A typical Regulation 30 statement is attached as Exhibit 2 to this affidavit. Agent Rosenberg's affidavit in support of the application for summons enforcement, which I have examined, purports to describe Continental's record-keeping system but omits any mention of the Regulation 30 or budget and expense statements. This omission, which renders Agent Rosenberg's description misleading, is difficult to understand as an individual experienced in data processing would know that summary information is normally prepared to recapitulate detail data for reporting purposes.

(7) The figures from the Regulation 30 year-end cumulative summaries are used in the preparation of the company's Annual Statement and Insurance Expense Exhibit.

(8) Any computer produced data in Continental's Annual Statement can be traced to the year-end summary Regulation 30 statements. The individual expense items that make up the totals in the summary statements can be found in the monthly detailed print-outs. The print-outs will show the voucher or other identifying numbers. The vouchers and attached invoices will then give the names of the specific payees and the numbers of the checks used for payment

(9) Computer tapes must be stored under special climate controlled conditions since they are subject to deterioration. For example, any exposure to magnetic objects or excessive heat may produce irreparable damage. Further, INSCO is aware that tapes have been accidentally erased by operators who press the wrong computer drive button. Any tapes given to the IRS or other outside parties would have to be duplicated in order to ensure against any such types of accidental damage.

(10) Duplication of these tapes would involve significant expenses and inconvenience for the company. In addition, Magnetic Tapes Number 110101 and 421001 -- the general expense and loss tapes -- respectively consist of 12 and 13 separate reels per year, each weighing approximately three pounds. Duplicating these tapes would cost approximately $3,000, including the computer and personnel time that would be used, as well as the purchase price and storage for the duplicating reels. Thus, duplication of reels representing two years of general expense and loss tapes would cost approximately $6,000.

(11) Agent Rosenberg's offer to use INSCO's Neptune, New Jersey computer system would not lessen -- and in fact might increase -- the burdens and expenses imposed on the company. First, the general expense and loss tapes called for in the summons are stored in Chicago, Illinois and Glens Falls, New York and would have to be transported to INSCO's facilities in New Jersey. In addition, because of the equipment involved, INSCO would not permit an

outsider to operate its computers. Thus, the Service would have to provide detailed instructions so that INSCO's personnel could program and operate the system in the manner sought by the Internal Revenue Service. The agents have given no indication of the amount of computer and personnel time that would be required if this alternative were adopted. The expense, however, could become substantial since the normal charges of INSCO's computer facilities at the Neptune, New Jersey Data Center are roughly $750 per hour. I am unaware of any offer by the Service to reimburse Continental for these costs.

(12) Agent Rosenberg, in his affidavit, claims that the print-outs from the general expense tapes are incomplete since they do not contain data on payroll, commission and other brokerage expenses. This, of course, simply reflects the fact that, as Agent Rosenberg has been informed, the tapes themselves do not contain this information. However, printed records which disclose payroll and commission data are available. These printed records were obtained by combining the information contained on Continental's premium tapes, which consist of approximately 10 reels per month (120 per year), with the percentage formulae on its "commission rate" tapes. If the IRS ultimately intends to summon the commission and premium tapes, Continental would have to turn over more than 200 reels of tape per year -- i.e. the premium, commission, general expense and loss tapes. For the years under audit, Continental's duplication and other costs in order to comply with such requests would probably exceed $12,500 for each year.

(13) Agent Rosenberg claims that Continental's tapes could be used to print out the amounts paid to individual officers and employees of Continental and its affiliated companies. This is not correct, since the tapes in question have not been coded for that purpose, except with respect to expense account data. The expense account data is readily available in individual expense records. The amounts paid to others can only be obtained from manually-prepared files which have been prepared and maintained for each payee.

(14) In sum, there is no item of general expense on the computer tape which does not appear in readable form on the print-outs and other records of the company.

George L. Moore

George L. Moore

Subscribed and sworn before me this 7th day of October, 1975.

Notary Public

My Commission expires _____

HENRY WINETSKY
NOTARY PUBLIC, State of New York
No. 30-[illegible]
Qualified in Nassau County
Commission Expires March 30, 19[illegible]

EXHIBIT 1

BUDGET & EXPENSE REPORT

The CONTINENTAL INSURANCE COMPANIES
HOME OFFICE
SUMMARY BY OBJECT
GENERAL EXPENSES

PERIOD ENDING MO. 04 DAY 30 YR. 75

CURRENT MONTH ACTUAL	CURRENT MONTH BUDGET		NO. OF EMPLOYEES ACTUAL	NO. OF EMPLOYEES BUDGET	YEAR TO DATE ACTUAL	YEAR TO DATE BUDGET	YEAR TO DATE VARIANCE
229-	7,250	GATHERINGS & OUTINGS			35,987	38,655	2,668-
91,247	103,150	INSURANCE FORMS			477,199	378,600	100,599
3,569	7,216	INSURANCE GENERAL			18,881	34,596	15,714-
18,765-	19,183	LEGAL & AUDIT FEES			158,718	116,583	42,135
		MAINTENANCE SUPPLIES			6	50	44-
3,546	6,754	MEDICAL EXAM FEES			20,703	27,013	6,310-
522	1,650	MEDICAL SUPPLIES			7,982	6,600	1,382
35		MISCELLANEOUS FEES			335	122	213
7,498	7,500	MOVING EXPENSE			15,417	15,000	417
155,414	159,732	OFFICE RENT			624,038	638,468	15,570
10,677	13,652	OFFICE SUPPLIES			59,353	54,118	5,235
2,835	1,656	OTHER MAINTENANCE COST			8,408	7,874	534
1,484	3,190	MEMBERSHIPS			13,341	25,323	6,982-
3,044	3,720	MISC PERSONNEL COSTS			7,668	14,930	7,042-
6		SUPPER MONEY			214	290	76
1,042		TUITION FEES			10,242	13,720	3,478-
5	17	OTHER RENTS			29	34	5-
1,076	6,250	EMPLOYEE CONFERENCES			1,976	26,950	25,974-
8,356	7,312	FOREIGN ALLOWANCES			31,329	32,573	1,244-
2013,447	1610,614	OUTSIDE SERVICES			7336,045	5460,229	87
8,625		PERSONAL			48,755		
2004,821		OTHER			1287,290		
35,741	37,067	POSTAGE			182,129	183,368	1,239-
	50	PREMIUM AUDIT FEES			39	200	161-
113,179	95,470	PRINTED MATERIAL			475,561	428,700	46,861
57	4,200	RATING MANUALS			3,771	16,800	13,029-
9,419	7,194	RENT OF EQUIPMENT			43,130	28,380	14,706
1,659	2,931	RENT UNOCCUPIED SPACE			7,009	8,683	1,673-
15,357	12,028	REPAIRS TO EQUIPMENT			74,256	48,712	25,546
16,326	13,866	TELEPHONE			62,117	54,965	7,152
3,649	3,328	TELEGRAMS & TELETYPE			15,923	14,043	1,880
16,610	14,378	TOLL CALLS			65,410	57,968	7,442
3,664	4,000	RECRUITMENT ADV & FEES			14,095	19,150	5,055-
45,917	57,652	TRAVEL & SUBSISTENCE			199,419	203,463	4,044-
7,123		ENTERTAINMENT			29,935		
771		PERSONAL AUTO			2,921		
15,810		SUBSISTENCE			62,127		
22,221		TRANSPORTATION			105,276		

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PAGE 1

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EXHIBIT 2

TABULATION BY EXPENSE GROUP BY REG 30 BY CONVERSION CODE

GROUP	REG 30	CONV	MONTHLY AMOUNT	YEAR TO DATE AMOUNT
00	080	223		230.00
		REG 30 TOTAL		230.00
00	120	223		94.23
		REG 30 TOTAL		94.23
00	130	223	452.09	3,616.71
		REG 30 TOTAL	452.09	3,616.71
		GROUP TOTAL	452.09	3,940.94
10	190	001	4,478.01	39,621.11
10	190	002	17,233.40	149,677.72
10	190	003	40,697.78	297,687.08
10	190	004	10,509.41	81,338.51
10	190	005	11,844.23	227,623.69
10	190	006	1,337.97	37,408.59
10	190	007	14,931.91	101,985.28
10	190	008	1,962.27	14,245.39
10	190	009	5,022.84	65,086.72
10	190	010	737.21	8,610.48
10	190	011	16,066.95	59,293.27
10	190	016	4,837.95	55,289.32
10	190	019	3,514.89	33,737.98
10	190	030	38,928.29	330,171.26
10	190	032	7,667.08	63,897.60
10	190	175	1,695.49	18,488.66
10	190	176	468.00	6,850.00
10	190	177	799.23	12,477.84
10	190	181	3,405.69	27,245.52
10	190	182	96.57	772.56
10	190	184	399.17	3,193.36
10	190	196	102.00	1,761.00
10	190	202	180.26	1,442.08
10	190	203	469.97	3,759.76
10	190	210	2,975.68	29,349.44
10	190	211	94.00	1,392.00
10	190	231	135.20	1,081.60
10	190	234	392.72	3,141.76
10	190	235	482.85	3,862.80
10	190	237	515.04	4,120.32

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA and WALTER ROSS, Revenue Agent, Internal Revenue Service, Petitioners,	:	AFFIDAVIT
v.	:	
GEOFFREY DAVEY, as Secretary of THE CONTINENTAL CORPORATION, Respondent.	:	
WASHINGTON, DISTRICT OF COLUMBIA	:	ss.:

WILLIAM F. GLEASON, JR., being duly sworn, deposes and states:

(1) I am a Vice President, Assistant Secretary, and Tax Counsel for the Continental Corporation and make this affidavit for use in the above-captioned case.

(2) I am the officer of Continental Corporation responsible for handling of IRS audits of its affairs.

(3) The Continental Corporation files a consolidated federal income tax return with its affiliates and is classified by the Internal Revenue Service as a large case subject to continuous audit. Continental annually expends substantial time, money and effort in meeting information requests from

the auditing agents, and in fact has set aside an office at its headquarters for the exclusive use of the IRS. Continental's tax department has assigned one member of its staff to devote substantially his entire working time to complying with information requests from the agents. Other members of the tax staff devote significant amounts of their time (frequently from 40% to 75% of their time) working with the agents. Allegations that Continental has attempted to obstruct the agents in performing their auditing functions are simply not true.

(4) In the middle 1960's, the Service began auditing Continental's taxable years since 1954, all of which had been kept open by waivers of the statute of limitations. This resulted in requests by the Service for massive amounts of information, frequently involving transactions and documents occurring or prepared many years previously. To comply with these requests, the company was required to undertake a substantial expansion and reorganization of its tax department. The fact that the Service has since the middle 1960's completed audits of sixteen taxable years (1954 to 1970) emphasizes that Continental has made substantial and good faith efforts to comply with requests for information.

(5) Continental utilizes data processing technology to produce computer tapes containing the information taken from the company's original vouchers and invoices. The tapes are an intermediate processing step and are used solely for the purpose of printing the permanent records of the company in the form required

by the state insurance regulations. These bound print-outs are then used to compute the company's taxable income which, as provided in Section 832 of the Federal Internal Revenue Code, is computed under the accounting methods required by state insurance regulations.

(6) In connection with the current audit of 1971 and 1972, the agents have requested Continental to turn over a number of these computer tapes relating to general expenses and losses. The agents have been given full access to the print-outs which contain all the information that would be found on the tapes. The IRS never requested Continental's computer tapes in connection with any of its previous audits.

(7) Turning the summoned tapes over to the Service would impose substantial burdens on the company. Because of the risk of loss or damage, Continental would be required by sound business practices to first make duplicates of the tapes. The costs of such duplication would be substantial. Continental concluded, on the basis of advice of counsel, that the computer tapes, which are simply intermediate processing materials by which the information on the original invoices and vouchers is converted into print-outs, are not materials which the Service is entitled to obtain.

(8) When I informed the Service of this conclusion, one of the agents told me that a published court decision had held that the Service could obtain computer tapes in this type of situation. I indicated to the agent that Continental would of course abide by any controlling precedent. In spite of my repeated

requests for a cite to or copy of this decision, however, the agent continually delayed providing it. He eventually conceded that he was mistaken and no such decision existed.

(9) In his affidavit in support of the Government's application for enforcement of the summons, Agent Rosenberg claims that during a 1973 meeting I stated that Continental's refusal to produce the tapes resulted from a desire to prevent a thorough audit. Agent Rosenberg's affidavit does not mention the exact date of this meeting, but Agent Ross' affidavit states that Agent Rosenberg told Agent Ross that the meeting occurred on February 13, 1973. All my scheduled meetings are recorded in my daily calendar and no meeting with Agent Rosenberg or any other IRS representative is shown on my calendar for February 13, 1973. I have no recollection of such a meeting. At a meeting later that year, Agent Lou Album, the case manager on the Continental audit, attempted to convince me that the computer tapes should be provided so that the agents could conduct a fast audit. I expressed doubt whether production of the tapes would result in a quick audit. I never told Agent Rosenberg or any other IRS agent that Continental was trying to avoid a thorough audit.

(10) In December of 1970 the Service published Revenue Ruling 71-20 which took the position that computer tapes must be retained by taxpayers. On January 27, 1971, I transmitted a copy of this ruling to Mr. William A. Power, Manager of the INSCO

Systems Corporation, the affiliated firm which provides computer processing services for the Continental Corporation. I told Mr. Power that Continental's computer tapes should be retained for all years back to and including 1966. Apparently, the personnel at the computer center misunderstood the implications of the ruling and believed that it did not apply to general expense tapes. By the time this misunderstanding was corrected, the general expense tapes for 1971 had been erased in accordance with the company's then retention period. This erasure, of course, occurred several years prior to the Service's requests for these tapes.

William F. Gleason, Jr.

- 4th day of

Serial A 24177

DISTRICT OF COLUMBIA

To All Whom These Presents Shall Come, Greeting:

I Certify that LOIS U. CLEMETZ whose name is subscribed to the accompanying instrument, was at the time of signing the same a Notary Public in and for the District of Columbia, and duly commissioned and authorized by the laws of said District of Columbia to take the acknowledgment and proof of deeds or conveyance of lands, tenements, or hereditaments, and other instruments in writing to be recorded in said District, and to administer oaths; and that I am well acquainted with the handwriting of said Notary Public and verily believe that the signature and impression of seal thereon are genuine, after comparison with signature and impression of seal on file in this office.

In Witness Whereof, the Executive Secretary to Commissioner of the District of Columbia, has hereunto caused the Seal of the District of Columbia to be affixed at the City of Washington, D.C., this 6 day of October 1975

(D. C. SEAL)

Pauline Gottlieb
Chief, Notary Public Section

J 165—75

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- x

UNITED STATES OF AMERICA, :

Petitioner, :

vs. : M18-304

GEOFFREY DAVEY, :

Respondent. :

- x

BEFORE: HON. HENRY F. WERKER, D. J.

New York, N. Y.
October 16, 1975
3 P. M. - Room 1506

APPEARANCES:

PAUL J. CURRAN, United States Attorney,
For the Government
BY: PAUL H. SILVERMAN, ESQ.,
Assistant United States Attorney

WALTER ROCKLER, ESQ.,
and
EDWARD DONOVAN, ESQ.,
For the Respondent.

MR. SILVERMAN: Ready for the petitioner.

MR. ROCKLER: Ready for the respondent.

THE COURT: You may proceed, Mr. Silverman.

MR. SILVERMAN: Your Honor, this afternoon we meet on an order to show cause based on an application, affidavits, and memorandum of law submitted by the United States Attorneys office on behalf of the Internal Revenue Service on September 16, 1975. In this court the Honorable Kevin T. Duffy issued an order to show cause on Geoffrey Davey secretary of the Continental Corporation, the respondent herein, to show why he should not be compelled by this court to honor a summons issued upon him in the early part of 1975. A copy of that summons is attached as Exhibit A to the moving papers.

The opposition papers were received on October 7, 1975 and the government, together with the court, waits now the response of the respondent.

MR. ROCKLER: We are prepared to respond, your Honor. Before we get to the evidence in the case I would like to ask the court to excuse Mr. Davey from his physical presence here in the court room pursuant to a court order. He is really a nominal party and he will respond to any proper order.

MR. SILVERMAN: Your Honor, my only suggestion

to the court is that Mr. Davey recognize on the record that he will be personally called before the court at this time and that any order rendered by the court may well affect him personally and that he is satisfied that his representation without any physical presence is warranted in this case and that he is doing this of his own volition and understands that the order to show cause is directed against him personally as secretary of the Continental Corporation.

THE COURT: Mr. Davey?

MR. DAVEY: I so recognize.

THE COURT: Do you understand this, sir?

MR. DAVEY: Yes.

THE COURT: All right.

MR. ROCKLER: To assist the court if I might briefly outline what I think this case is about.

As government counsel said this is an effort by the Internal Revenue Service to enforce a summons under Internal Revenue Code Section 7604. There are,of course, a great multitude of reported cases in the courts on summonses and no one questions, certainly we do not, that the governmenthas very broad investigative and discovery powers.

However, the subject matter of this case is absolutely novel. There is no precedent for the issue

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which is now before the court.

Not only is the subject matter novel, but in our view the government makes some startling novel contentions to support its position. It urges three grounds upon the court and we think each of them is erroneous and misleading.

First, it urges that computer tapes which cannot be used except as a processing tool, are records, books and papers of the corporation. It seems evident on the face of it that tapes are not books, records and papers of the corporation. They are tools like adding machines or calculators or any other device that produces an end product. Whether we use the tapes or the government uses the tapes, the tapes themselves can be used anywhere.

The tapes are only useful to produce a printout. We have printouts of the tapes. We made them available to the government. They contain every bit of data which appears on the electronic form and on the chemical tapes.

The position we have taken here is the position which the government has taken in this procedure in 1964 which we cited in this court. Moreover, it is the position which is broadly taken in the federal rules on evidence in Section 1001(3) which states that computer printouts,

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not the tape, is the original evidence. I don't think the tape has any evidentiary status whatever. The only utility to the tape once you have a printout is to verify whether it is an honest printout and, in other words, one might question that printout was fabricated or falsified. The tapes would be useful to establish it was a proper printout of the tape.

THE COURT: How did they establish it if they don't have the tape?

MR. ROCKLER: They can't establish that. If that were the purpose of the govermment requesting the tapes we would be glad to make them available and they could check in the printout. We would be glad to make that available to them.

They never asserted any question that our printouts are true. That isn't the issue here.

They want the tape for an undisclosed purpose of their own which is not at all clear to us. Our point is that we made available and we stand ready to make available all the data required by code Section 7602, namely, the books, records and papers and data outside of the books, records and papers which add something to them which they may request.

The tapes in question however I reiterate and

this is because this is very basic to this issue and it distinguished it from any other case, containing only the data which now appears in the printout. The printouts contain everything on the tapes and the tapes contain everything on the printout, they are duplicates. One is readable and the other has to be processed. If you process the tapes you get the printout.

Therefore since we have made available the books and records, the printouts form a part of our regular journal that are used by us, the regular journals in the course of the business and the tapes, of course, are not, we have really made available everything which they can properly require. Really their position is that they would like to have our pencils and papers and sharpening tools in a certain sense.

The second point the government has made, and we think it is utterly without merit and it reflects a misunderstanding of how the records of Continental are kept, is that the printouts are not helpful to them in auditing because they are prepared for allegedly non-tax, managerial purposes. This happens to be entirely wrong.

The printouts basically are prepared in order to prepare the so-called annual statement on what is

commonly known as NAIC form, the National Association of Insurance Commissioners form. All insurance companies file reports with the state regulatory commission on standard forms which has been agreed upon by the 50 states.

In turn the Internal Revenue code says that these NAIC forms shall be the basis for the tax report. So when we prepare something which is useful for the annual statement we are essentially putting it in a form which is going to be used for tax returns and as a clear correlation, this isn't anything new in this case. If you look in the IRS code it says you are going to get that data about income and deductions by looking at the annual statement. The purpose of this printout is to meet what is known in the trade as regulation 30. This is a New York State Regulation which provides how expense data shall be furnished and coded and which provides information as to coding and registration of loss information. The tapes are coded in conformity with that standard. They lend themselves readily to use in the NAIC statement and the NAIC statement lends itself to direct use in preparing the tax returns.

So the assertion that our printouts are not geared to tax returns is just erroneous. And the suggestion that it serves an extraneous or managerial function of

Continental is erroneous.

It is true that some of the data which appears on the tax returns and insurance company returns may be useful to management as well.

Finally we get down to the last assertion which the government strenuously argues in its memorandum, namely, that it is "brazen and impudent on the part of the taxpayer to question their summons."

Presumably the quotation was taken from Mr. Ross' affidavit. The suggestion is that the IRS has the power to determine what it can get and really the taxpayer has no right to question them.

Well, there is a modest amount of truth in that. The IRS is entitled to request; ordinarily the taxpayer will not have any grounds to resist. If the taxpayer has reasonable grounds and we believe we do, a determination does not rest on the IRS. It comes exactly where it is right now, before a court.

I think beyond that I see nothing in the government's moving papers that raises any other issue and I would like to reiterate, I am probably getting repetitious, but all data which the government seeks on the tapes has been made available to them and will be made available to them on request in the form of printouts from the tapes.

Therefore I think they are asking for purely redundant materials.

Now, the redundant materials they want would be expensive for us to furnish them. We could not give them the originals to take off to their standard. We have to duplicate the tapes.

Equally, if we were to make available to them the use of our equipment there is a substantial operating charge with respect to it. The government has at no time offered to make any payment for the special services and special materials which is requires and in this circuit it is very clear under the case of United States against Davey -- a coincidental name -- 426 Fed. 2nd 842, a 1970 Second Circuit case, where the government requests materials in the course of an audit beyond the usual examination of books and records, it must pay a reasonable cost for any such additional materials. The cost in this case is several thousand dollars.

Thank you, your Honor.

THE COURT: All right.

MR. ROCKLER: The respondent calls as its first witness in this case Mr. William Gleason.

WILLIAM F. GLEASON, called as a witness on behalf of respondent being first duly sworn was examined and testified as follows:

DIRECT EXAMINATION

BY MR. ROCKER:

Q Where are you employed, Mr. Gleason?

A I am employed by the Continental Insurance Company.

Q What is your position there?

A I am vice president and tax counsel for both the Continental Insurance Company and the Continental Corporation, its parent.

Q What are your duties as such vice president and tax counsel?

A I have the senior responsibility for the company's tax functions.

Q Does that include reporting and auditing functions?

A Yes, sir.

Q Do you have any people working for you?

A Yes, we have a staff of some 13 individuals in the tax department.

Q Do you participate in IRS audits of corporation returns directly?

A Yes,

Q Can you describe generally the character of the IRS audits of Continental?

A Continental is considered by the IRS --

MR. SILVERMAN: I object. Mr. Gleason is now attempting to testify what the adversary considers during its audit of Continental.

THE COURT: I will sustain the objection.

A Continental is under constant audit by --

MR. SILVERMAN: The objection was sustained.

THE COURT: The objection was sustained. There is no question before him. You can't answer.

MR. ROCKLER: The question is not objectionable?

THE COURT: The question was objectionable.

Q Can you describe generally the character of the IRS audit as you see it?

THE COURT: All right?

MR. SILVERMAN: I have no objection.

THE COURT: As he sees it.

A Continental is a large case and as such is under constant audit by representatives of the IRS, working generally in a team fashion.

Q That would imply the use of more than one IRS agent on occasion?

A That is correct.

Q Who participates in the audit proper on Continental's side?

A We have involvement on Continental's side by principally four or five members of the Continental tax staff. One member of the staff is assigned as a principal duty to the conduct of the IRS audits.

Other members of the staff spend substantial amounts of their time involved in questions that arise out of the audit.

Q Where are the audits conducted?

A On the Continental premises. An area is reserved for the IRS agents who are conducting the audit.

Q How much time do they spend on an audit on an annual basis?

MR. SILVERMAN: I object, your Honor.

THE COURT: I will let him answer.

A Could I have the question again?

Q How much time do they spend on the audit?

A For a particular year?

Q Yes or for a couple of years.

A I think it is fair to say that the IRS has been in almost, constant, almost constantly on the premises conducting the audit since the middle of the 1960's.

One or more representatives of the IRS.

Q Turning to the audit of the years 1971 and 1972, what kind of materials have you supplied to the IRS agents?

A We have supplied the books and records of the companies that are involved in the audit.

Q What kind of materials have you supplied them with respect to general expenses?

A We supplied them with the printout, the copy printout of the detail of the general expenses.

Q Have you turned down any request on their part for printouts?

A No.

Q Do you have any responsibility for preparing the Continental tax returns?

A I do.

Q What is that?

A I have the responsibility for it. My department has complete responsibility for the preparation and filing of the federal returns.

Q How do you collect the data that goes into those federal income tax returns?

A We collect the information that is compiled by the various accounting centers that have responsibility for the accounting centers within the Continental Corporation.

Q Is there any relationship between the data which you use for federal income tax purposes and the data which is incorporated in the annual statement to state commissions?

A The annual statement is the basis for the preparation or calculation of the taxable income reported by the insurance companies.

Q Are you familiar with the Continental accounting procedures generally?

A Generally.

Q How does Continental collect the data which appears in the annual so-called NAIC statements?

A Referring to expense exhibits?

Q Let's talk specifically about expenses.

A Again, I am only generally familiar with this. I would rather let someone in our organization who is more directly involved in the area of data collection answer that but basically the data is collected, the expense is collected at regional centers.

MR. SILVERMAN: I object.

THE COURT: I will sustain the objection. I think it is better to have the person who knows the answer.

Q To your knowledge does Continental collect any

of its expense data through the use of automatic data processing methods?

A Yes.

Q Speaking again of the expenses, for how many years to your knowledge, if you know, has Continental used automatic data processing?

A A number of years but again I would rather let the details of the historical data processing be answered by someone in a better position to know.

Q Were there any differences in the way you collected and maintained your books and records for tax purposes in the 1971 and 1972 years from the way in which these things were done, let us say, for 1965 through 1970?

A Not to my knowledge.

Q In each case is it correct that you maintained expense data through automatic data processing methods?

A Yes.

Q Were you ever subjected to audit in the years 1965 through 1970?

A Yes.

Q Was a comprehensive audit conducted?

A Yes.

Q Was there any request made to examine the tapes?

A No.

Q Was any dissatisfaction expressed with the books and records that you made available?

A No.

Q In connection with the 1971 and 1972 audits did you ever have any discussions with IRS personnel on making available the electronic tapes?

A A number of discussions.

Q Can you recall with whom you had these discussions?

A With the agents who are assigned to the case, Mr. Ross in particular and with the data processing experts who are attached to the district director's office here in Manhattan.

Q Did you ever indicate to these agents or representatives that you would make the tapes available?

A No, sir.

Q Did you make it clear that you would not make them available?

A Yes.

Q Has the IRS ever offered to pay the expense of duplicating tapes?

A No.

Q Have they ever made an offer to cover your expenses in running your computer equipment?

A No.

Q Where are the 1971 expense tapes now, the tapes which have been demanded in this case?

A They have been erased.

Q Under what circumstances were they erased?

A The normal retention period that we heretofore had for the expense tapes was very limited. I believe it is some 30 days and due to a misunderstanding between the tax people and the INSCO Corporation, the firm who is responsible for the preparation and maintenance of our tapes, they were erased by INSCO personnel in the normal course of their retention.

Q Were theyerased before any requests was made for them by IRS?

A Yes.

Q Were they erased before any demands were delivered by IRS?

A Yes.

MR. ROCKLER: Will you mark this for identification.

XXX (Respondent's Exhibit A marked for identification.)

Q I hand you a copy of a document which has been marked as Respondent's Exhibit A for identification.

Please identify that document.

A This is an affidavit that I submitted in connection with the hearing here today.

Q Will you affirm what is in this affidavit as true and correct?

A I will.

MR. ROCKLER: No further questions, your Honor.

CROSS-EXAMINATION

BY MR. SILVERMAN:

Q Mr. Gleason --

THE COURT: Before we start, Mr. Silverman, are you marking that in evidence?

MR. ROCKLER: No, your Honor.

THE COURT: All right.

Q Mr. Gleason, is it correct that your standard procedure in 1972 was to erase the expense tapes after an approximately 30 day period, in the normal course of business?

A 1971. Prior to my notification to the data processing firms that the treasury had taken a position that was different or differed for normal retention.

Q When you talk about treasury you are talking about IRS?

A Yes.

Q When talking about their change of position, you are talking about revenue rule 71.20?

A Yes.

Q Is it correct that revenue rule 71.20 deals with the necessity of a taxpayer keeping data tapes, disks, punch cards, in coordination with the necessity rule of 6001 of the IRS code?

A Yes.

Q After you took recognition of rule 71.20 you instituted a different procedure, is that correct?

A Yes.

Q That procedure was to tell your computer people to maintain those tapes, is that correct?

A That is correct.

Q To maintain them in connection with revenue rule 71.20, is that correct?

A That is correct.

Q Was it your decision to have those tapes maintained at INSCO in New Jersey?

A I communicated with the officials of the company in New Jersey and informed them of the revenue rule 71.20 and instructed them to comply with the ruling in substance.

Q Is it correct to say that you didn't tell any personnel in your corporation to take the reels and put

them in a particular place; is that right?

A That is not my function.

Q That may well be. Therefore you did not tell them that?

A That is true.

Q You didn't tell them to store them in Glens Falls, New York, did you?

A No, I did not.

Q You didn't tell them to store them in Chicago, Illinois, did you?

A I did not.

Q You weren't directed by the IRS to store them in Glens Falls, New York, were you?

A No.

Q You weren't directed by the IRS personnel to store them in Chicago, Illinois, were you?

A No.

Q You said that you used automatic data processing systems to collect information from various departments, is that correct?

A Information is collected regionally in various accounting departments in these regional centers.

Q When you say regional centers are we talking about 8 different geographically independent centers?

A Yes, sir.

Q Are they located throughout the United States?

A In 8 different locations.

Q As far as away as California to New Jersey?

A Yes. New Jersey is not a location but --

Q As far as from California to New York?

A Yes.

Q And is the information which you gathered in these 8 different regions all over the country initially gathered by placing that information on computer tape?

A I would rather not answer this question because I don't feel I am qualified.

Q You are not in a position?

A To outline in detail the procedure that we follow.

Q You actually don't know yourself?

A That is correct.

Q Do you recall your corporation being sent formal requests for particular computer tapes?

A Yes.

Q Do you recall that you did not respond specifically to those formal requests in writing?

A I believe that is correct.

Q Do you know how many corporations made up the consolidated tax return of Continental Corporation in 1966,

approximately?

A I would have to take a guess but I could guess around 60.

Q Could it be six?

A No -- you say the Continental Corporation?

Q Yes, sir.

A The corporation was not the taxpayer in 1966.

Q Who was the taxpayer?

A Continental Insurance Company, the predecessor to the Continental Corporation.

Q That had 60?

A I am guessing but roughly that. Within the consolidated return you mean?

Q Yes. And in 1971, 1972, how many corporations were in the consolidated return?

A Again, I am guessing but it would be in excess of 100.

Q Would it be closer to 150?

A In 1971?

Q 1971, 1972.

A I don't know. I know in 1974 it was 103. I just happen to have this figure in my recollection by I don't have a recollection other than within the broad parameters that I have given you.

It could be very easily checked. It is simply a matter of looking at the tax return.

MR. SILVERMAN: May I have this marked for identification.

XXX (Petitioner's Exhibit 1 marked for identification.)

(Petitioner's Exhibit 2 marked for identification.)

MR. ROCKLER: May I see the exhibits, counselor?

THE COURT: They are just for identification.

Q Mr. Gleason, I show you what has been marked as Petitioner's Exhibits 1 and 2 for identification and ask you if these refresh your recollection as to the number of corporations in the consolidated return for 1966 and 1971?

A These appear to be the affiliation schedules.

Q Well, Mr. Gleason, do they help refresh your recollection is really the question.

A The answer is I over-estimated the number in 1966. It was in fact 21 and I under-estimated the number in 1971. It was in fact 149.

Q You believe that to be true, the numbers you have just given?

A Based on the refreshing that you made possible for me.

Q When you communicated about the storage of the computer tapes, did you communicate with Mr. George Moore?

A I communicated with Mr. William Powers by memorandum.

Q Do you recall what date that memorandum is?

A I believe either late January or early February of 1971. Again, I would like to refresh myself. I don't have any accurate memory of the exact date but I remember three or four weeks after the revenue ruling.

Q Do you remember the substance of that memorandum?

A I told him that the treasury had published this ruling, I indicated that we should take immediate steps to comply with its content, with its spirit hopefully as far back as 1966.

I had no idea what the retention period for these tapes were at the time I sent him the memorandum and I attached a copy of thememorandum to my -- I am sorry, I attached a copy of the Internal Revenue ruling to Mr. Powers.

Q Mr. Gleason, let me ask you something. You are a tax counsel, is that true?

A Yes.

Q You are an attorney for a number of years?

A Yes.

Q You work exclusively for the Continental Corporation, is that correct?

A That is correct.

Q You read revenue rule 71.20?

A That is correct.

Q You made a determination and acted upon that determination and sent a memorandum to Mr. Powers at your computer center, in the INSCO computer center, is that correct?

A Mr. Powers I believe is executive vice president of INSCO Systems Corporation and, as such I was told this is the person responsible within that organization for seeing that the spirit of the revenue ruling was implemented.

Q You sent the memorandum in order that the spirit of revenue rule 71.20 would be implemented, isn't that correct? Isn't that what you just said?

A That is what I just said. Again, I would like to look at the memorandum I sent to him and refresh my recollection.

Q Did you bring it here today?

A I don't believe I did. I could very easily get it though.

Q Let me ask you this question: Is there any question you wanted to obey revenue rule 71.20 when you wrote that memorandum?

A I certainly didn't want to put myself in a position where I would disobey the memorandum.

Q I can understand that, sir.

A The ruling, I am sorry.

THE COURT: Mr. Silverman, let's get on with this please. I don't really get the import of this at all.

MR. SILVERMAN: Yes, your Honor.

THE COURT: Where they may be stored and so forth is not important. The fact is that at the moment he wished to comply or indicated to someone that he should try to comply with this by no means gave up any of his rights or the corporation rights to contest that ruling.

MR. SILVERMAN: Absolutely not, your Honor.

THE COURT: So I don't see what the last two questions had to do with this whole thing.

MR. SILVERMAN: I will bring it to a point by asking the last question.

THE COURT: All right.

Q Mr. Gleason, what did you understand revenue ruling 71.20 to require you to do?

MR. ROCKLER: I object to that, your Honor. I am not sure that has any relevance to this subject matter.

MR. SILVERMAN: It is directly relevant to the subject matter.

THE COURT: What, the question of storage?

MR. SILVERMAN: I would like to know how Mr.

Gleason viewed at that time, to see whether the Continental Corporation at that time viewed it in that manner.

THE COURT: I don't know how they viewed it at that time. They just had a new revenue ruling that he felt someone should do something about. I am not going to ask him what his view of it was. The question of the Continental view of it may have rested with the board of directors.

MR. SILVERMAN: All right, I have no further questions.

MR. ROCKLER: I have no further questions.

THE COURT: You are excused.

(Witness excused.)

MR. ROCKLER: Mr. George Moore is the next witness.

G E O R G E L. M O O R E, called as a witness on behalf of respondent being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. ROCKLER:

Q Mr. Moore, what is your occupation?

A For the last year I have been treasurer and assistant secretary of the INSCO Systems Corporation, a wholly owned subsidiary of the Continental Corporation.

Prior to that time I was manager of the computer

applications group that was responsible for the maintenance of Continental's expense and loss expense records and program.

Q What is the business of INSCO?

A INSCO is a data processing service organization that, among other things, rents computer time, creates programs for users, rents facilities on a time sharing basis and other related data processing activities.

Q Who does it rent these facilities and use of computers to?

A To the public at large. At the present time some of our clients are Metropolitan Life, Prudential Life and so forth, as well as a large number of small users.

Q Do you charge them fees for these uses?

A Yes, we charge fees based on the man hours that our personnel are engaged in their work. Fees on retention of tapes that are used in time sharing activities and fees for machine useage.

Q What is your experience in the area of automatic data processing?

A I have been in the field for approximately 25 years. Directly in data processing or activities related to imput and output of data processing.

Q Can you state again what was your employment in the years 1971 and 1972 specifically?

A I was manager of the computer applications group which consisted of the programmers, the systems analysts responsible for maintaining Continental's expenses, loss expense and general expense systems.

Q How does Continental record expense and loss data or information?

A In each of Continental's eight geographical divisions manually prepared vouchers are made to record the entry on their books of account in those divisions.

From these vouchers coding of slips are prepared which are sent to INSCO's key facility at that location.

At that point and still at each individual location the punch cards are then transferred to magnetic tapes. Those magnetic tapes from each region are subsequently sent to the Neptune Data Center where they are commingled and used to prepare the expense detail listing and other summary reports.

Q Where is the Neptune Data Center?

A In Neptune, New Jersey.

Q What is then done with the tapes that have been developed?

A Well, after the preparation -- excuse me, at what point?

Q When you have produced a master tape from the

materials received.

A We have produced the master tape, those tapes are erased and used for other applications within 45 days.

Q What do you do with the master tape?

A The master tape prior to Mr. Gleason advising Mr. Powers we retained the master tape of the detailed items for 30 days.

Q How long do you retain it now?

A We now have an indefinite retention on them.

Q What did you do with the tapes after you had produced them? You had now tapes. What did you do with them?

A The tape that we are now retaining?

Q Yes.

A We at one point in time when we felt there was a possibility they might be called on again --

Q I think you are missing my question. What use did you make of the tapes? What use did you make of the tapes? What was the purpose of producing the tapes?

A And retaining them was strictly in accordance with Mr. Gleason's instruction. We had no further use for them.

Q Did you secure any product from the tapes?

A During our normal -- talking about normal operations?

Q Yes.

A After the expense detail listing was prepared we also produced summary totals of the items on the tape.

Q What form?

A A by product it was a printout which we entitled regulation 30 recapitulation report.

Q Did you run a printout of the tapes themselves?

A Yes. The printout of the tapes themselves was a detailed listing of every item on the tape and called an expense detail listing.

Q Does that detail listing pick up every item which is entered on the tape?

A Yes.

Q Is there anything on the tape that would not appear on this printout?

A No.

Q Did you do anything further with that detail printout?

A The detail printout was maintained by Continental at their offices.

Q Did you prepare any other printout than the detailed printout?

A Yes, we prepared the regulation 30 recapitulation that I just referred to.

Q How often were those prepared?

A Prepared monthly, and the report showed the monthly and year to date summary figures.

Q What was the purpose of the regulation 30 printout, do you know?

A Yes. They were funished to the Continental accounting department to be used in the preparation of the insurance expense exhibit.

Q Could you go from the detail expense printout back to the original vouchers for each item?

A Yes. The expense detail printout has a voucher number printed which is the cross-reference that would lead you back to the original voucher.

Q Can you go from the regulation 30 summaries to the detailed listing on the printouts, the detailed printout?

A Yes.

Q Can you spot check the printout?

A Yes.

Q You were talking about retention of the tapes after you had used them to produce printouts. Why are they kept, if you know, at centers away from Neptune? I guess it was suggested in Glens Falls?

A Right. These tapes -- our normal procedure is for tapes being kept for long term retention, that we do not

expect to use during a current operating period. To ship them to Chicago and Glens Falls.

They have space in the tape libraries there and spaces at a premium in our Neptune Data Center.

Q Was that the decision in Glens Falls or Chicago affected by the IRS situation?

A Not at all.

Q Under what circumstances do you keep those tapes? What conditions are they?

A We keep them a so-called tape library which is a room designed specifically for tapes; air condition control, fire preventive apparatus and so forth.

We have these facilities available in Glens Falls and Chicago as well as Neptune.

Q Are these tapes susceptible to damage or destruction?

A Yes. That is why we keep them in this controlled condition.

Q How could they be damaged?

A Well, if they were in an area where they would be subject to any magnetic interference they could be damaged. Excessive heat could damage them, and there is also a degree of damage over a period of time from normal deterioration.

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Q Do you keep duplicates, duplicate sets of these tapes?

A No, we do not.

Q Could you duplicate the tapes?

A We could duplicate the tapes that we have now, with a qualification.

We have not had any experience in going back five and six years and duplicating tapes. We have duplicated in the past going back three and four years that we have lost some of the data.

So we cannot guarantee a complete 100 percent duplication of every item on the tape.

Q Is there any expense involved in duplicating the tape?

A Yes. For every tape that we duplicate we in effect would have to purchase a new tape to take its place. That's in addition to the normal charges for the computer and the manpower involved in duplicating the tape.

Q Would there be any problems in allowing IRS personnel to use your computer equipment?

A Well, as a matter of practice we never let anyone use our equipment other than our own operators.

There's always a chance of accidental damage or erasure of tapes from someone not familiar with the IBM

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equipment or any equipment.

To answer your question we would not allow IRS to use our facilities with their personnel.

Q Would you allow any other outsiders to use them?

A Definitely not.

Q Have you taken on jobs for other people for pay?

A Yes.

Q Has IRS ever offered to pay any expenses if you ran the computers?

A Not to my knowledge.

Q Have they ever offered to pay for duplicating tapes?

A Not to my knowledge.

Q Mr. Moore, do the summons tapes, the tapes which have been made the subject of this summons contain information on payroll commission or brokerage expense?

A No.

Q Where is such data reported, do you know?

A Well, data on payroll is kept in payroll records in the cashier's department on hard copy printouts.

Expense account information is kept in the accounting department which maintains a file of the actual expense account rendered by the individual involved.

Commission data -- did you commission and brokerage?

Q Yes, commission and brokerage.

A That would be kept on the hard copy premium register also maintained in the accounting department.

Q With respect to the tapes which are the subject of the summons, could you secure from these tapes by re-programming them, all payments made to individual employees for a given year?

A No.

Q Does that kind of information exist in the company?

A It exists on manual records in the various departments involved.

Q What is the relationship between the printout secured from these tapes and the data required by state insurance commissions?

A Well, the transactions that are on the printout are coded to what we call object classification.

These object classification codes are directly related to the regulation 30 reporting requirement which becomes part of the insurance expense exhibit.

MR. ROCKLER: I would like to have this document marked for identification.

XXX (Respondent Exhibit B marked for identification.)

Q I hand you Respondent's Exhibit B for identifica-

tion. Can you identify that document?

A Yes, I can.

Q What is it?

A It is the affidavit that I prepared and signed.

Q Is this affidavit true and correct in all respects?

A It is.

MR. ROCKLER: I have no further questions, your Honor.

CROSS-EXAMINATION

BY MR. SILVERMAN:

Q Mr. Moore, the summons that we are concerned with today discusses magnetic tape numers 110101 and magnetic tape number 4 21001.

A Yes.

Q Is that correct, that these two tapes contain the general detail expense listings of Continental Corporation?

A The 110101 tape does.

Q And what the 4 21001 tape contain?

A That includes the loss payments of the Continental Corporation and certain loss expenses -- I should say the Continental Insurance Companies, not corporation.

Q How many physical reels of tapes does this consist of?

A The 11001 tape consists of 12 for a year, one for

each month.

The 4 21001 consists of 13 tapes a year.

Q One of the tapes is missing, is that correct or has been destroyed; is that correct?

A For what year?

Q In the 1971 year.

A In the 1971 year following normal practice we erased after 30 days retention period the 110101 tapes.

Q Is it correct to say that we are concerned with this summons with approximately 37 reels of magnetic recorded tape?

A If we are talking about the year 1971 and 1972, that is correct.

Q In order to printout the general expense detail listing printout, do you use a coding program in coordination with the tape?

A Will you explain that?

Q Could you tell us in order to make the preset printout of the expense detail listing, you take a tape is that correct?

A We take a tape and pass it through a program that arranges the data in the form that you see on the printout.

Q Is that program found on the tape itself?

A No, it is not.

Q Does that program contain a record layout?

A Yes, it does.

Q Does that record layout,does that program command the tape to printout in a specified organization?

A Yes.

Q Do you have a particular reason why the material on the expense detail listing is organized in the manner in which it is found on the preset printout?

A One of the methods is department. So there is a particular reason to do that.

Q What value do you derive by organizing the material on the tape in a particular method which you set it out on a particular expense detail listing printout?

A It is used as a reference tool for instance if a particular item of expense is being questioned, by referring to the codes on the printout, you can tell what departmental office the expense was incurred in and therefore where the voucher and invoice are available.

Further you can tell to what object classification it was coded to and arrive at its handling in the regulation 30 reporting.

Q Do you use a different program, a different record layout to produce the regulation 30 statement printout?

A The program that processes the data -- it is the

same tapes but a different program?

Q Yes, sir.

A Yes.

Q Do you use a different program, different record layout, to make the budget and premium printout?

A Could we go back because you said different program and record layout.

We use a different program for the printout. The record layout is of the transaction on the tape. That record layout is the same.

Q Correct. Let's segregate and narrow ourselves to just the question of the program itself.

Is it correct to say that you use one program to make the printout to organize the material for expense detail listing; that you use another program to create the regulation 30 statement and you use a third program to create the budget and premium printout?

A Yes.

MR. SILVERMAN: May this be marked for identification.

XXXX (Petitioner Exhibit 3 marked for identification.)

Q Can you identify this, Mr. Moore?

A Yes. This is a sample of the expense detail listing we have been discussing.

Q For Continental Corporation?

A No, for the Continental Insurance Companies.

Q Within the consolidated -- concerning the tay-payer which we have been discussing, is that right?

A Yes. This is a portion of the expense detail listing.

Q You mean one page?

A No. The system that we are referring to is not designed for the Continental Corporation. It is designed for the Continental Insurance Companies and certain affiliates. It is not the Continental Corporation system.

Q Is the Continental Corporation larger than the Continental Insurance Companies?

A No. Certain of the expense data that is processed in each departmental office for some of the Continental subsidiaries are not on this system, and would not appear on any detail listing and tape.

Q What has been identified as Petitioner's Exhibit 3 for identification is one page of virtually thousands of pages of printout which has been submitted for the government's perusal?

A Yes, for Continental Insurance Companies, yes.

MR. SILVERMAN: After showing this to respondent's counsel I offer this in evidence at this time.

MR. ROCKLER: No objection.

THE COURT: Received.

(Petitioner's Exhibit 3 for identification received in evidence.)

XXX

Q Mr. Moore, can you tell me approximately how many records are contained on an expense detail listing printout sheet?

A I am guessing, 50 records.

Q Does a record constitute one line across on the piece of paper?

A Yes.

Q Is it correct that each record is a separate recorded transaction independent from the record that comes before it or after it?

A Yes.

Q Are there approximately 75 pages per month per geographical department which are produced in printout form?

A I have no knowledge of that.

Q Do you have any estimate?

A No.

Q Could it be more than 100 pages per department?

A It could. I really don't kno.

Q But it is possible.

A Is it possible?

Q Yes.

A I think it is possible, but I don't think it would be more than that.

MR. SILVERMAN: Could I have this marked, please.

XXX (Petitioner's Exhibit 4 marked for identification.)

Q Mr. Moore, I show you what has been marked as Petitioner's Exhibit 4 for identification and ask you if you can identify that?

A It is a cover page of the annual statement of the Continental Insurance Company.

Q Stapled to it, sir --

A Is a page which lists the officers and directors of the Continental Insurance Company.

Q And a page underwriting an investment exhibit page and schedule O of the annual statement.

THE COURT: Any objection?

MR. ROCKLER: No objection.

MR. SILVERMAN: The government offers this into evidence at this time.

THE COURT: Received.

XXX (Petitioner's Exhibit 4 for identification received in evidence.)

THE COURT: I don't see the relevancy of it.

MR. SILVERMAN: The relevancy your Honor is quite -- we submit that the taxpayers are saying to us in essence that this is attached to a blank Internal Revenue Service return and that this is their returns and that from these we can audit trail back to individual voucher through printout sheets.

Our case is that we can't do that.

THE COURT: How do you explain that.

MR. ROCKLER: I should agree it is not particularly relevant but I don't object to it.

THE COURT: I must tell you something, I took this matter on this afternoon on the basis of Judge Cannella swearing under oath that it would take no more than an hour and we are ten minutes overtime right now.

You have got to move it and you better move it. We will take a short recess. Do not discuss the case with anyone in the interim.

(Recess.)

THE COURT: You are still under oath.

THE WITNESS: Yes, sir.

BY MR. SILVERMAN:

Q Mr. Moore, I show you what has been marked as Government Exhibit 3, the expense detail listing preset

printout and ask you using that as a sample could you please tell me approximately how many records are contained on this printout sheet?

THE COURT: I think that was asked and answered.

A It still looks like 50.

THE COURT: Let me ask you this, Mr. Moore.

From that sheet you can tell where these expenses have been incurred, what office, right?

THE WITNESS: Yes.

THE COURT: And you can tell what the voucher number is?

THE WITNESS: Yes.

THE COURT: What column tells me where they have been incurred, and what office?

THE WITNESS: On the top.

THE COURT: The title?

THE WITNESS: Right.

THE COURT: Home office Metropolitan?

THE WITNESS: Home office Metropolitan.

THE COURT: What makes you think you can't locate the voucher through those sheets?

MR. SILVERMAN: Because, your Honor --

THE COURT: Tell me, I am asking the witness can you tell me -- is there any problem in locating the vouchers?

THE WITNESS: To my knowledge, no. I would look up the voucher number and look for the voucher in that office.

THE COURT: It gives the voucher number?

THE WITNESS: I would go to the voucher number.

MR. SILVERMAN: Your Honor, the answer belies the fact that there are apples and there are bananas and they're all fruit. An audit process is not knowing what number to look for. That's the whole problem of an audit. An audit involved many different problems.

THE COURT: Would you like to testify?

MR. SILVERMAN: I thought you asked, your Honor.

Q Approximately how many records are there on the entire printout sheet for the expense detail listing?

A I have no idea.

Q Do you know whether there are over 400,000 records?

A For a particular month, department or year?

Q For one year.

A Do I know that?

Q Approximately 400,000.

A I have no knowledge of how many there are.

Q Would you estimate that it would be 400,000? Would that be an estimate?

A I say there is a substantial number but after you get up in those numbers I have no knowledge of it.

Q Is it beyond your realm of counting?

A No --

Q Have you ever manually worked with a whole printout sheet?

A No, I have not.

Q Has anybody in your employ ever worked with a whole printout sheet?

A This particular expense detail listing printout sheet?

Q Yes.

A No.

Q How many sheets of printout sheets does the expense detail listing contain for a whole year?

A I have no idea.

Q Would 7,000 pages be approximately the number?

A Country-wide?

Q Country-wide.

A I really don't know.

Q Would that be an impossible number?

A I would say no.

Q Therefore, Mr. Moore, if a person wanted to manually, by looking at a printout sheet, find out every item, every expense over $5,000 and under $6,000 reported as part of these reports, isn't it correct that he would have to eyeball

the thousands of pages that were involved to go through the hundreds of thousands of tiny reports to find the particular expenses that came between the stratification of $5,000 and $6,000?

A If you are asking if I had to do that?

Q Yes.

A I don't know what your audit process is.

Q If you had to do that?

A I would have to flip and look at each page.

Q How long would it take you, sir?

A I have no idea.

Q Would you take you manyman hours?

A Many many more than two or three?

Q Many many more than 100?

A I would not think so, but I am just taking a guess.

Q Because you have never actually done that?

A But I never also had to look for anything between $5 and $6 thousand in which you just asked me to explain.

Q Your company to the best of your knowledge has never used this printout sheet for that particular function, is that correct?

A I am talking for a data processing company.

Q Your data processing?

MR. ROCKLER: Your Honor, I am going to object

to this. I don't see any point in badgering the witness with respect to matters as to which he says he has no knowledge. I see no point in putting rhetorical questions to him. It is just a great waste of time.

THE COURT: Your objection is well taken and belated.

Q Do you have any particular knowledge of the durability of magnetic recording tape?

A Particular or general?

Q Particular.

A In my experience we have gone back --

Q Do you have any knowledge of the durability of magnetic recording tape?

THE COURT: Answer it yes or no.

A The tape itself rather than the data on the tape?

Q Yes.

A No.

Q Do you recognize the journal of accountancy as a recognized authoritative work in your field, in the field of accountancy?

A Yes.

Q Would you state that this is a correct statement of fact from the journal of accountancy dated June 1974:

"If tape is exposed to a temperature of 150

degrees over a period of time it will be damaged?"

A I would accept that.

Q Would you accept the statement:

"At a temperature of 250 degrees the tape will become unreadable in ten minutes?"

A I don't know.

Q You don't know that.

A When you say unreadable, I would assume there is some damage. I can't testify as an expert on the chemical composition of the tape.

Q Would you consider this an accurate statement:

"To alter a tape or disk a powerful magnetic would have to be placed almost in direct contact with the recording surface?"

A No, not on what you said, no.

Q You would consider that an incorrect statement, is that right?

A I wouldn't accept that as gospel, no.

Q Have you ever heard of a device called a ring, a protective ring?

A Yes.

Q How does the protective ring function?

A The protective ring is a device used on a tape that would prevent other data being written on that tape

during a computer process.

Q Doesn't it have a function in connection with the erasure process?

A Yes.

Q What is that function?

A I thought I answered that.

Q Were you about writing just a moment ago? I am now asking you about erasing. Does the ring have something to do with the erasing process?

A When the ring is in the table not be erased.

MR. SILVERMAN: May this be marked.

(Petitioner's Exhibits 5 and 6 marked for identification.)

Q Mr. Moore, I show you what has been marked as Petitioner's Exhibit 5 for identification. I ask you if you can identify that?

A It is a computer ring.

Q I show you what has been marked as Petitioner's Exhibit 6 for identification and ask you if you can identify it?

A It is a tape reel.

Q Is the tape reel that is marked as Petitioner's Exhibit 6 similar to the tape reels you used at INSCO?

A Yes.

Q Similar to the tapes that the government is now seeking?

A Yes.

Q As to the 37 reels which the government is seeking, are each of them completely filled with information?

A No.

Q On the average how much of the tape is used for information?

A I have no knowledge of that.

Q Could it be as small as one hundred feet out of 2400 feet?

A That relates roughly to the number of items which I testified I have no knowledge of.

Q How long do you estimate a tape to take duplication per reel of tape of one reel of tape?

A Directly related to the density of the bits on the tape, the type of equipment that you are using to duplicate it and the number of items on the tape. I can't make an estimate.

Q In relation to the reels of tape which we are discussing today.

A I don't know how many items are on the tapes.

Q Could you make an approximation of how much you would charge to copy approximately 25 9 channel, 1600 VPI

2400 foot IBM magnetic tapes.

A 25?

Q 25. How much per reel would that be?

A To copy?

Q Yes.

A Approximately $15 to $20.

Q Per reel?

A Right.

Q Do you receive tape shipped to you regularly from other departments and your storage location at INSCO in New Jersey?

A Yes.

Q How do they come in, by mail?

A Air freight primarily.

Q Do you insure them?

A I don't know.

Q How are they boxed, in cardboard?

A They are boxed in the type of container that they are normally purchased from the manufacturer.

Q If you have completed your use of information contained on the tape reel, it is possible to erase the tape information and use the tape again, isn't that correct?

A Yes.

Q Approximately how much does a reel of tape cost?

A $12 to $15.

Q In your affidavit which I show you at this time marked as Exhibit B for identification, paragraph 10, you discuss the amount of approximately $6,000 for the duplication of the reels of tape which we are discussing; is that correct?

A Yes.

Q Now after our discussing it at this moment would you say that the figure is less?

A Well, are you talking about -- you're bringing in a point that a certain number of tapes are used are no longer available. They are less to that extent.

Q That is correct. Let us limit ourselves to 37 reels of tape at approximately $15 per reel.

A Well, -- go ahead. That is the duplication?

Q Yes.

A Now the cost of the new tape.

Q You said isn't it correct that you will get the tape back, you can use the tape over again if it is returned to you, is that correct?

A We don't have that tape available the day after we duplicate it. We have to buy a tape to replace it for the other work.

Q All right. So there is a question of another

$12 for the tape per reel for about 37 reels, is that correct?

A Yes.

Q That would be the price of the duplication?

A No. You have got the computer operator operating the machine.

Q When you said it cost $15 to duplicate the tape didn't that incorporate the employee?

A No.

Q How much would that cost?

A For these 25 tapes? Approximately $50.

Q Is there anything that we left out?

A Yes. If we had to undertake this job we would have to have someone, an analyst or a responsible person, in charge of it.

Q Do you need an analyst in order to make a tape to tape duplicate copy?

A No. We have to have an analyst, a responsible person to initiate this whole process to decide what is going to be duplicated, who is going to duplicate it, who is going to control it.

Q How much would that cost?

A Well, the rate would be $25 an hour. It depends how much work he would do on a project.

Q How long does it take him, the command last

to command the tape relay to duplicate tapes?

A A person would be assigned. Continental would ask us to do this job for them. We would get the request in Neptune.

We would then assign an analyst as his job to see that this is taken care of. I can see it stretching over a week of his time, possibly including trips to Glens Falls and Chicago and so forth.

Q If I may say exclude the transportation time.

A Okay.

Q Just consider --

A A week of his time would be approximately $8 or $9 hundred.

Q You are saying it would take approximately one week of an analyst's time to run a duplication of approximately 25 reels of tape?

A No. I am saying an analyst would be committed to see that this job was done correctly and it would possibly stretch over a week of his time.

XXX (Petitioner's Exhibit 7 marked for identification.)

Q I show you Petitioner's Exhibit 7 for identification and ask if this helps you in evaluating how much per reel it would cost to copy a tape to tape in a tape duplication system?

A Did this change my estimate?

Q Yes.

A No. I am using our billing prices. I am not familiar with anybody else's.

Q What -- what's the number of your tape relay drives by the way?

A We have too many various types for me to try to identify.

Q You have IBM 360's?

A 360's and 370's.

Q Assuming that the 37 reels of tape are filled to capacity, how long a period of time, job time would it take INSCO to make a duplicate reel to reel copy of these tapes?

A In our Glens Falls office which I used as a basis of my estimate, of 10 minutes.

MR. SILVERMAN: Thank you. I have no further questions of the witness, your Honor.

THE COURT: All right.

MR. ROCKLER: No further questions.

(Witness excused.)

MR. SILVERMAN: Your Honor, at this time the government goes forward with its case.

THE COURT: Are you finished?

MR. ROCKLER: Yes, I am.

THE COURT: All right.

MR. SILVERMAN: I am sorry for the presumption.

At this time the government goes forward with its case. I would like to make a short and concentrated analysis of our position.

Our position is grounded on Internal Revenue Code of 1954 as amended sections --

THE COURT: I have this in the papers don't I?

MR. SILVERMAN: Yes, your Honor, you have the respondent's answering papers also.

THE COURT: Let's get the witness on the stand.

MR. SILVERMAN: Fine. I now call Walter Ross.

Before the witness is sworn there is one case cited by respondent that was not cited previously and I would just like to make a reply, to that Davey case.

A 116

The Government's position on this case is that that dealt with a third party, not the taxpayer. That dealt with a credit card company that made its living out of distribution of information and by its own language discriminated a third party from a taxpayer who would be called to give out information.

W A L T E R R O S S , called as a witness on behalf of the petitioner, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. SILVERMAN:

Q Good afternoon, Mr. Ross. By whom are you employed?

A The Internal Revenue Service.

Q How long have you been so employed?

A Nine years.

Q In what particular area have you been employed in the last nine years?

A As a revenue agent.

Q Did there come a time when you became involved with the taxpayer audit of Continental Corporation?

A Yes, I did.

Q Approximately when?

A June 1973.

Q How did you become so connected?

A I was assigned the case by my supervisor and was told to examine the 1971 tax return.

Q Did you execute an affidavit in coordination with this case?

A Yes, I did.

MR. SILVERMAN: Would you mark that?

[Petitioner's Exhibit 8 marked for identification.]

Q I show you Petitioner's Exhibit 8 for identification and ask you if you can identify it.

A Yes. This is an affidavit that I signed.

Q Do you affirm at this time the facts stated in this affidavit?

A Yes, to the best of my ability they are true.

Q Did you issue a summons in connection with the taxpayer Continental Insurance Corporation and computer tapes thereof?

A Yes, I did.

Q Is this attached as Exhibit A to your affidavit?

A Yes, it is.

Q I show you what has been attached to the affidavit previously identified as the Moore affidavit as Exhibit 1, budget and expense report and 2, tabulation by expense group

by Regulation 30 by conversion code.

I ask you if these reports provide an adequate audit trail for your audit purpose?

A No, they do not.

Q Why do they not?

A Because they require going back to the expense detail listing for the items which we want to examine and need the original source documents of.

Q What if anything would be different from the audit trail produced by an IRS program printout and the preset printouts before you in addition to the detail expense printout, heretofore marked Petitioner's Exhibit 3?

A Our audit trails would be much more efficient and reduce the time spent going through all the expense detail listings that were submitted to us.

We could probably produce what we want in one thousandth of the time that it required to go, to pour through all these detail listings if we want to go only to one area, we can do it from our programs.

MR. SILVERMAN: May I have these marked?

[Petitioner's Exhibit 9 and 10 marked for identification.]

Q I show you what has been marked as Petitioner's Exhibit 9 and 10 for identification and ask you if you can

identify them.

A Yes, I can. These exhibits are stratifications of legal fees and expenses which we had done which the computer audit specialist prepares for us on light company and zeroed in only on the items that we wanted. We then got a retrieval --

Q Thank you.

MR. SILVERMAN: I offer these into evidence at this time.

MR. FOCKLER: Objection, your Honor. These documents aren't in any way authenticated and have nothing to do with our case. They have to do with an examination of another insurance company.

MR. SILVERMAN: With all due deference, your Honor, they are entire elevant to this case. They show by clear example by the revenue agent before us, exactly the stratification of information grouping that he is searching in the Contintental Corporation which has heretofore been denied by them.

THE COURT: Your statement takes in too much. There has been nothing denied as far as I can see except the tapes. That is what you are after.

You haven't asked them as I understand it to program this for the particular item.

MR. SILVERMAN: That is correct.

THE COURT: Have you?

MR. SILVERMAN: No, your Honor, but what my comment --

THE COURT: Is a tempest in a teapot but I think there is a real serious question of principle here. If Continental was asked to produce items of $6,000 or more I am sure that could be programmed with your computer specialist sitting right there and set right out.

MR. SILVERMAN: That is correct.

THE COURT: In no time at all.

Why should you have the tapes?

MR. SILVERMAN: Because that has been denied us.

THE COURT: You haven't asked them for specific items.

MR. SILVERMAN: That is incorrect. Your Honor, with all due deference --

THE COURT: I am asking you have you asked them for specific items?

MR. SILVERMAN: We are doing an audit and we need to do things. We have to verify the tape itself as authentic and the second thing we need to do is we have to do stratifications.

THE COURT: I suggest to you that you ask

to verify -- you are talking about primary source and this is a lot of nonsense. The primary source are the invoice. You want to verify something now to the invoices.

MR. SILVERMAN: Your Honor, in an audit process is a sampling and in order to make a sampling, in order to know what you need to sample in and of itself, it is the program that does it.

THE COURT: Well --

MR. SILVERMAN: We have established --

THE COURT: I don't know whether you have established anything at the moment. Go ahead with your questions.

MR. SILVERMAN: Your Honor, I am compelled to bring this up, I ask that these be submitted into evidence.

THE COURT: I am going to reject them.

Q I show you what has been identified as Petitioner's Exhibits 9 and 10 and ask you -- withdrawn.

What is it that the Government seeks at this time, Mr. Ross?

A The tapes.

Q Why is it necessary for you to have the tapes?

A For us to do a more effective audit.

Q How are you able to do a more effective audit?

A By programming the tapes for our particular

needs which would establish certain items which we want to go into.

Q Would you be able to give this information to request Continental Corporation analyzers to obtain this information for you?

A No, we could not.

Q Why not?

A Because we would not be able to probably tell them what needs and what items we are looking for and what -- well, it is done primarily because we have a computer audit specialist who does it and we have a separate department and we have done this in all our cases and that is the reason.

THE COURT: Do you mean a lot of other people furnished you with their tapes?

THE WITNESS: Of course, All of them.

THE COURT: Name one.

THE WITNESS: Well, put it into evidence. You have --

THE COURT: Name one who furnished the tapes.

THE WITNESS: Chub Corporation. I'm not on the case.

THE COURT: Name one that you were on.

THE WITNESS: I have never asked for tapes

previous to this --

MR. SILVERMAN: Will you place into evidence, your Honor, through another witness the answer to your question.

A Because --

THE COURT: All right.

Q Why did you decide to ask for tapes of the Continental Corporation?

A Because the 1971 year and subsequent years were programmed to include a computer audit specialist which was not done previously because of Revenue Ruling 7120. We did not have a need for that prior to that and the Government implemented a special group called Computer audit Specialists.

Q Is there any way you can determine whether all the information on a printout tape has been reproduced on a printout?

A No, I cannot.

MR. SILVERMAN: I have no other questions of this witness.

CROSS-EXAMINATION

BY MR. ROCKLER:

Q Mr. Ross, were you involved in the audit of Continental for years before 1971?

A I was not. Yes, in fact I was. I was in -- when I came in June of 1973 I had to complete the 1970 year because the prior agent had retired from service.

Q Also when you took on the case for 1971 and 1972, naturally you started with the antecedent audit reports and the information which the prior agent was able to furnish you?

A That is correct.

Q So that you are fairly familiar both first and secondhand with the way in which the prior audit was conducted?

A Yes.

Q Are you aware that the expense and loss information was then on tapes as well?

A At the time I was not aware of it.

Q Are you aware of it now?

A Yes, I am.

Q So that in the years 1965, 1966, 1967, 1968, 1969 and in 1970, all this information is on tapes?

A That is correct.

Q As far as you know, did the IRS request the tapes?

A No.

Q Did they need the tapes for the audit?

A No, because of the fact that this computer audit program was implemented after revenue --

Q I understand that was your program. But did they need the tapes for the audit? Couldn't they have gotten --

MR. SILVERMAN: I object, your Honor.

THE COURT: Overruled.

Q Didn't they conduct the audit without the tapes?

A They did.

Q Weren't they able to verify anything they wanted to verify?

A To my knowledge they did not go into any expenses on the previous examination.

Q You mean it wasn't interesting to them?

MR. SILVERMAN: I object.

MR. ROCKLER: I am asking the question.

THE COURT: I overrule the objection.

Q Expenses weren't interesting to them?

A I don't know what the prior agents did.

Q As far as you know did they have any difficulty verifying anything from printouts?

A I don't know if they even asked for printouts.

Q They would ask for anything they wanted. They would ask for the records.

Let me ask you, before there were computer tapes and you had journal entries, handwritten journal entries which is really what these printouts are, how did you verify anything? How could you program by handwritten entries?

A By asking for certain source documents.

Q Vouchers?

A The journal entries.

Q And you could ask for the vouchers on the printouts too, can't you?

A But they require a great deal much more work which we would have to do.

Q You are saying we ought to furnish this stuff to you because it is convenient for you.

A It is not convenient, it is necessary as part of our audit.

Q How did you audit handwritten journals?

A How?

Q Yes.

A Handwritten journals --

Q How did you program them?

A Continental Corporation, Insurance Company, is a mammoth size group of companies that have expenses which are voluminous.

Q I understand that.

A There are thousands of pages.

Q And they are also summarized in monthly and annual summarizations which you could look at?

A Yes, they are. But the point is we have got to go to the expense detail listing and they do not furnish us with enough -- they furnish us with the information but it is a tremendously tedious job to go through these to look for legal bills which may be fragmented.

If I am interested in legal bills over $5,000, it is possible that one legal bill of $7,500 is fragmented into many diffierent object codes.

Q Forgeting fragmentation. I am interested in what you said about being tedious. Don't we really get down to this: You would like us to do certain things for you so as to relieve the tedium of the audit?

A We are not asking you to do it. We will produce the printout -- you will product the printout from our program which is done by our computer specialist.

MR. ROCKLER: I have no further questions.

[Witness excused.]

MR. SILVERMAN: Your Honor, at this time the Government would call George Moore -- no, I won't.

The Government at this time would call Edward

Rosenberg.

E D W A R D C. R O S E N B E R G, called as a witness on behalf of petitioner, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. SILVERMAN:

Q Mr. Rosenberg, by whom are you employed?

A Internal Revenue Service.

Q Approximately how many years have you been so employed?

A Fifteen.

Q Since 1972 how have you been employed?

A As a computer audit specialist.

Q In how many computer audits have you been involved, computer assisted audit applications have you become involved?

A Fifty or more.

Q In your particular computer audit specialist applications have you ever been denied access to computer tapes?

A No.

Q Did you recently upon my request take a survey of computer assisted audits completed between the time period of July 1972 and September 1975?

A I took a survey of cases in which one or more computer assisted audits were performed.

Q What did your survey disclose?

A That 40 diversified firms in the chemical, building material, automobile and insurance areas gave us the tapes.

Q In fact were there various other types of industries included?

A Yes, sir.

Q Did you have a particular job assignment in connection with Revenue Bill 7120?

A Yes.

Q What was that?

A I was supposed to evaluate the machine sensible need used in the production of records of Continental Corporation.

Q To what end?

A To earmark those machine sensible records that would be needed in future audits.

Q Did you make a determination ?

A Yes, I did.

Q What did you do then?

A I incorporated my determination into what they call an agreement letter whereby we stated which tapes

we would need for future use in a computer assisted audit and in the agreement, this agreement would limit the number of tapes that Continental would have to hold under the ruling.

Q Of all the tapes, of all the computer tapes of Continental Corporation, what did this letter agreement propose to limit Continental Corporation to?

A The general expense file and losses paid file.

Q The two tapes we are discussing today?

A Yes, sir.

Q Mr. Rosenberg, what is the function of a computer tape?

A To store information.

Q From your experience what do you consider the original books of entry of Continental Corporation?

A The tapes.

Q Why is that?

A Because the original documents, original source documents have been written on the tapes, have been encoded and written on the tapes.

Q Have you seen Exhibits 1 and 2 of what has been heretofore termed affidavit of Moore dealing with the budget and expense report printout, dealing with the Regulation 30 statement?

A Yes, I have.

Q Have you also seen the expense detail listing printout?

A Yes, I have.

Q Can you tell me whether that provides an adequate audit trail for your audit purposes?

A No, it does not.

arcg 1 Rosenberg-direct

Q How if any way does it differ from the audit services that you require of the computer tape which we are now summonsing?

A Well, Continental Insurance Companies are a division of Continental Corporation and they file on Continental Corporation return, each one of these insurance companies files one line as profit and loss called underwriting income and expense.

They are backed up or supported by the annual statement of these insurance companies.

In the annual statement of these insurance companies on page 10 are the regulation 30 expenses listed.

Q I show you what has been marked as Petitioner's Exhibit 4. I ask you to turn your attention to page 10 thereof. Refer to that in your discussion.

A Listed vertically are expenses such as legal and auditing, equipment, director's fees. These expenses are represented by a major account code which appears in the detail expense listing and the magnetic tape.

Across the top of page 10 are allocations of these expenses. They are the loss adjustment expense, the other underwriting expense, the investment expenses and also a total column.

Now, the agent has to find the audit trail back

to the original invoice. The page 10 expenses are listed vertically are the accounts he wanted to examine.

In order to go through the layers of books and pick the source documents pertaining to these particular expenses, he must have the detailed monthly listing in the major account number. The major account number is the audit trail back to the original source document.

The detailed expense listing is by geographical location, department and date. The major account code is randomly scattered throughout the detailed monthly listing.

In order to put the pieces together, in other words to tie back to the specific major account as shown on page 10, he must reconstruct the monthly detail listing in the sequence of themajor account expense number.

Then he must add up those dollar amounts of that particular major expense for each geographical location to tie back to the 12 page annual statements which are filed for each one of the Continental Insurance Companies in that division.

Now, there are eight goegraphical locations and there are 12 months, so that would be a total of 96 print-outs averaging 75 pages in size. This would approximate 7,000 pages.

He would have to then take those 7,000 pages and

reconstruct the sequence of accounts so that the major account code would be in an ascending numerical sequence as the accounts listed on page 10.

When he did that and he got a total for each one of those major accounts that represents the advertising, the equipment and other items, he would then have to add up the 12 page 10 expense, vertical expense items to tie in to the detail listing to make sure he has picked up every item.

This is a tremendous task. If it took him three hours per page to do this, it would take 2100 hours and, therefore, with the use of the magnetic tapes and by sorting them in a major account field for each one of the 12 tapes, we can automatically in a matter of minutes have it sequenced properly and it would save the 2100 hours.

Aside from that, this is a tremendous corporation, we would not want to look at any one or two small items. It doesn't make sense. We want to look at the bigger amounts. We want to look at amounts over $5,000 or over $10,000 or over $15,000. If we took two percent of the invoices and check 50 or 60 percent of the dollar amount, we have done a good audit job.

The only way we can do that is to stratify the accounts. In other words we put the dollar amount of each record in that particular major account in a strata.

For example, from zero to a thousand dollars we would program the machine to printout the number of invoices and the dollar amount in that strata.

From 1,000 to 2,000, from 2,000 to 3,000. Then we would go back to the team coordinator and ask him which strata should we pull. In other words, shall we pick the top most strata with the largest bills and the smallest amount of invoice and thus save audit time and also save the taxpayer time instead of requesting hundreds and hundreds of small bills that don't mean anything, we could pick out the larger amounts, do an efficient audit and save the taxpayer time.

When we know what strata we want or what dollar amount we want to pick out, we then can reprogram the tape using our own programs called PAL, Program Audit Library, developed by the Internal Revenue Service. It would take maybe two or three hours for us to program and we would be able to retrieve only those items all with the specified amounts that the team coordinator picked.

It would also sub total or total those items that were not picked and total the grand total so we know when the total amount of items picked and not picked will total the amount on this page 10 reports.

Now, the detailed monthly listing and the magnetic

tapes consist of all the information on all 12 insurance corporations.

THE COURT: I think we have been over this before as far as I am concerned. I don't think we need any more testimony with respect to that.

MR. SILVERMAN: Yes, your Honor.

THE COURT: I know what an annual report contains.

MR. SILVERMAN: But this man is telling you what an audit trail necessitates.

THE COURT: I understand. But we are going on ad infinitem.

MR. SILVERMAN: Yes, your Honor.

Q Mr. Rosenberg, I show you what has been marked as Petitioner's Exhibit 11 for identification.

(Petitioner's Exhibit 11 and 12 marked for identification.)

XXX

Q I ask you if you can identify Petitioner's Exhibit 11.

A Yes, this is a copy of the affidavit I signed on September 16, 1975.

Q Do you today affirm the statements of fact contained therein?

A Yes, I do.

Q I show you what has been marked as Petitioner's

Exhibit 12 for identification and ask you if you can identify it?

A Yes. This is the retention agreement letter sent to Continental Corporation.

MR. SILVERMAN: The government offers Petitioner's Exhibit 12 for identification in evidence.

MR. ROCKLER: I object to Exhibit 12. That consists of a proposed agreement which the government tended to the taxpayer which the taxpayer rejected.

MR. SILVERMAN: Absolutely, your Honor.

THE COURT: The question is on the record that they rejected it and I will accept it in evidence for what it is worth.

MR. SILVERMAN: Yes, your Honor.

XXX (Petitioner's Exhibit 12 for identification received in evidence.)

MR. SILVERMAN: I have no further questions of this witness.

CROSS-EXAMINATION

BY MR. ROCKLER:

Q Mr. Rosenberg, you were asked whether tapes are records and you said they were, am I correct?

A Yes.

Q You said they were because you picked up original

data which the company had, is that correct?

A I said original data was written on the tapes.

Q That's why they were records?

A From source documents, yes.

Q I assume that vouchers also are records?

A Vouchers are records.

Q Also the punch cards are records, aren't they? You make the tape from the punch cards. Aren't the punch cards records?

A Yes.

Q So the data is on the punch cards really. The tapes are subordinate to the punch cards. It is really the punch cards that are the ultimate records, aren't they?

A Yes, the punch cards could be considered.

Q Where do the printouts fit in. Aren't they the journals of the company? Isn't that what you do with tapes?

A The printouts are records of the company.

Q What do you do with the tape except get a printout from it?

A You can use a program to rearrange the data in any way you want.

Q But then when you are all through rearranging it by programming it you get a printout, don't you?

A Yes.

Q And if you don't get a printout you ain't got anything?

A You can always get a printout from the tapes.

Q If you don't have a printout you got nothing. The tapes aren't worth anything to anybody.

MR. ROCKLER: Pass that question.

Q Is everything on these tapes on the printouts which you have as far as you know?

A I couldn't answer that question.

Q Do you have any doubt about it?

A I don't know.

THE COURT: Let me ask is there any reason to doubt it? You have been on this assignment since 1973. Is there any reason Mr. Ross has ever given or anyone else to doubt that all the data on the printout is also on the tapes and vice versa?

THE WITNESS: I have no reason to doubt it.

Q If you flip the printout detail expense listing, and I mean flip them and you wanted to pick out items with $5,000, couldn't you pick them out by looking at the amount?

A You would have to look at the major account code.

Q But you look at the item, that would give you the amount, wouldn't it? I am not talking where it is classi-

fied but the amount.

Let us assume you wanted to pick out legal expenses in excess of $5,000. You know the code number for legal expenses, don't you?

A Yes.

Q You identify the code and identify the amount.

A Yes, you would know if you had all of them.

Q Why wouldn't you know if you had all of them? You know what that particular item was.

A But the total --

Q Presumably it represents a single legal bill, doesn't it?

A Yes.

Q If you wanted to pull legal bills in excess of $5,000 you could do it by flipping the pages, couldn't you? That doesn't take three hours per page, does it.

A No, it doesn't but we don't know if we included all the legal bills to tie them back to the annual statement.

Q This is a reproduction in effect of the total vouchers for legal bills. They appear on the printouts. By flipping the printout pages can you pick up every legal bill in excess of $5,000?

A Yes, but it would be flipping 7,000 pages.

THE COURT: Yes, I know but that takes you what,

about two seconds per page?

How long would it take you to flip a page and see if there is a $5,000 item on it? You don't have to study it, all you have to do is spot it.

A Yes, you could.

MR. ROCKLER: I have no further questions.

REDIRECT EXAMINATION

BY MR. SILVERMAN:

Q Can you tell me, Mr. Rosenberg, what the philosophy of an independent audit clarification is?

A Independent?

Q Independent audit verification.

(No response.)

MR. SILVERMAN: I have no further questions.

THE COURT: All right.

(Witness excused.)

MR. SILVERMAN: The government has one more short witness.

THE COURT: All right.

J A C K R. B U C H A N A N, called as a witness on behalf of petitioner being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. SILVERMAN:

Q Mr. Buchanan, what is your profession?

A I have been professor for computer science and I am now serving as Supreme Court Judicial Fellow and as director of the program to automate the federal court system.

Q What is your particular background in computer technology?

A I have a Ph.D in computer science from Stamford and served as a professor of computor science and have 11 years of experience in industry corporation like IBM, Sperry-Rand and numerous consulting firms, law firms and soft wear development firms.

Q Have you been present in the courtroom this afternoon when testimony was being taken and evidence submitted?

A Yes.

MR. SILVERMAN: Your Honor, I would ask that the witness be qualified as an expert at this time in computer technology.

MR. ROCKLER: I agree, your Honor.

Q Mr. Buchanan, do you consider a computer magnetic tape an intermediate processing material?

A No, it is usually the basis of a whole host of processes that may arise out of the needs of the organization. That makes the tape.

Q In this particular audit summons, in this particular IRS summons question of two tapes in which the facts given are that a regulation 30 statement is made, and expense detail listing report is made and a budget and premium report is made, what in your opinion is the function of the tape?

A To provide the basis of storing the information for all those reports and perhaps even others, I don't know, for which it can be manipulated and processed to produce those things.

Q Is the printout, the preset printout sheets of the expense detail listing report, the budget and premium data, the regulation 30 statement report, equivalent data to the magnetic computer tape?

A Well, inasmuch as the exact items and information on the printout are exactly the same as those same corresponding items of information on the tape, the information content may well be equivalent.

But there is this dimension of form. It is really extremely important. Talking about equivalent information sources, in these days of massive masses of data, it is no longer limited to content only. It has to be the form in which it exists.

So if by just making the qualification that I

consider two dimensions of information, one that of content and two the form, clearly they are not equivalent.

Q Would you consider it to be sound professional judgment to consider the content without considering the form?

A Not at all.

MR. ROCKLER: I object to this kind of question. I am not sure what that means. Professional content from what standpoint?

A I can qualify my answer perhaps.

Q Would you please.

A The form is very much tied with the application you wish to make of the data, how easy it would be --

THE COURT: Programming for the particular item?

THE WITNESS: Yes, sir.

THE COURT: Right. That is what we are talking about I assume when we talk about form.

Q Are you knowledgable about tape duplication, tape to tape duplication?

A Yes.

Q Could you tell us basically the method and the length of time it takes to do a tape to tape duplication?

A Yes, very quickly. Two tape drives are used in which tape is written on is combined with the tape source.

Usually it is a utility program within the computer that the operator can walk over and either by entering cards or typing directly into the console cause the tape to be converted and it is just a very simple process that is standard procedure in any shop at all.

Q And the time involved?

A This depends on the speed of the tape drive and the system. I am not aware of the exact equipment used in this installation.

THE COURT: 360's and 370's.

THE WITNESS: There are still varying speed of tapes between 3 and maybe as much as 10 minutes. The faster ones are something like 4 minutes per tape.

Q And the cost involved?

A Probably this $15 figure is probably market for the actual processing.

Q The charge to the client?

A Yes.

Q Including employee time, including all the other factors?

A When you say all of the factors perhaps we can split up. Usually when most companies bill people for duplicating they do include operating time. However I can't comment on what other factors might be in this.

Q But $15 is approximately the gross total, is that correct? The billing price for the client?

A That is right.

Q $15 approximately?

A That is right.

MR. SILVERMAN: I have no further questions, your Honor.

MR. ROCKLER: I have no questions.

(Witness excused.)

THE COURT: Does the government rest?

MR. SILVERMAN: The government rests.

We would like to capsulate if we can our position.

THE COURT: You can capsulate but include it in a memorandum on November 5.

MR. SILVERMAN: Yes, your Honor.

THE COURT: In the meantime I shall reserve decision.

Any rebuttal?

MR. ROCKLER: No, your Honor. Shall we file a reply memorandum at the same time?

THE COURT: The same time.

MR. ROCKLER: Thank you.

- - - -

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Name	Direct	Cross	Redirect	Recross
William F. Gleason	10	18		
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PETITIONER

A 148

EXPENSE DET

1971

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		OBJECT CLASS DESCRIPTION
	2,275.08	PAYROLL REGU
	120.68	SOCIAL SECU
	36.20	SOCIAL SECU
	4.98	FEDERAL UNE
	1.49	FEDERAL UNE
	11.19	STATE UNEMP
	3.36	STATE UNEMP
	19.50	WORKMENS CO
	40.92	HOSPITALIZA
	30.60	LIFE INSURA
	14.68	INCENTIVE S
	48.91	INCENTIVE S
	10.00CR	BOOKS AND PE
	598.12	OFFICE RENT
	11.70	TELEPHONE
	111.62	TELEPHONE
	6.00	TELEGRAMS &
	5.90	TOLL CALLS
	.34	TOLL CALLS
	11.43	TOLL CALLS
011208848	19.41	ENTERTAINME
011208848	151.13	SUBSISTENCE
011208848	30.00	TRANSPORTAT
CONV CODE TOTAL	4,225.77	
	12.50	BANK CHARGES
	19.81CR	BANK CHARGES
	27.51	BANK CHARGES
	.50	BANK CHARGES
	1,525.07	OFFICE RENT
	59.36	OFFICE SUPPL
	40.22	OFFICE SUPPL
	82.04	OFFICE SUPPL
	49.35	PRINTED MATE
	36.24	PRINTED MATE
	261.82	PRINTED MATE
	133.94	TELEPHONE
	21.70	TELEPHONE
	.70	TELEGRAMS &
	8.00	TOLL CALLS
	12.42	TOLL CALLS
	.35	TOLL CALLS
	20.00	TOLL CALLS
	2.05	TOLL CALLS
077241391	59.89	SUBSISTENCE
077241391	17.20	TRANSPORTAT
	6.00	TRANSPORTAT
CONV CODE TOTAL	2,357.05	
	73.00	OFFICE RENT
	1,412.44	OFFICE RENT
	15.90	OFFICE SUPPL
	303.88	OFFICE SUPPL

PETITIONER

A 150

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ANNUAL STATEMENT

OF

THE CONTINENTAL
INSURANCE COMPANY

In the STATE of

NEW YORK

TO THE

INSURANCE DEPARTMENT

OF THE

STATE OF_____

FOR THE YEAR ENDED
DECEMBER 31, 1972

1972

FIRE AND CASUALTY, 1972

C 1972

...RS AND CASUALTY COMPANIES – ASSOCIATION EDITION, 1972 Form 1

...PORTANT: In the case of reciprocal exchanges and other types of insurers using special terminology, the printed items and references in this ...blank, if not appropriately changed, shall be construed to apply to such insurers in respect to corresponding data and information as the ...ontext may require.

ANNUAL STATEMENT

For the Year Ended December 31, 1972

OF THE CONDITION AND AFFAIRS OF

THE CONTINENTAL INSURANCE COMPANY

Organized under the Laws of the State of New York, made to the

INSURANCE DEPARTMENT OF THE STATE OF _____

PURSUANT TO THE LAWS THEREOF

Incorporated: January 1853 Commenced Business: January 1853

Home Office: 80 MAIDEN LANE, NEW YORK, NEW YORK 10038

Mail Address: 80 MAIDEN LANE, NEW YORK, NEW YORK 10038

Main Administrative Office 212 (Area Code) 853-6080 (Telephone Number)

OFFICERS**

NATHAN H. WENTWORTH, *Chairman of the Board*
SS # 133-36-8038

MILTON W. MAYS, *President*
SS # 081-05-3062

Executive Vice Presidents

DAVID GRAY
SS # 110-26-7009

HAROLD E. JOHNSON
SS # 328-16-2954

Vice President and Secretary	*Vice President and Treasurer*	*Vice President and General Counsel*	*Vice President and Controller*
GEOFFREY DAVEY	LEIGHTON M. LOBDELL	JOSEPH F. MURPHY	BYRON B. REDMAN
SS # 451-66-4194	SS # 140-22-0187	SS # 125-12-3432	SS # 136-03-4497

Vice Presidents

BRUCE R. ABRAMS	SS # 115-[illegible]	DAVID L. HARDEN	SS # 238-16-0008	EDWIN MUELLER	SS # 030-10-3356
GEORGE L. ARMSTRONG	040-[illegible]	DONALD R. HAVRICK	208-05-4002	ROBERT F. NABERS	256-16-3560
HAROLD Y. [illegible]	127-[illegible]	HORTON S. NICKERSON	080-05-6599	JOHN H. NORDLUND	097-12-6000
CLAUDE J. BOATTY	368-[illegible]	ROBERT T. ISRAEL	135-10-7155	SAL NUCCIO	103-20-0618
NORMAN J. [illegible]NNETT	011-[illegible]	GEORGE T. KEYES	225-22-0481	JOHN W. O'CONNOR	271-20-5360
JOHN H. BRETHERICK, JR.	181-[illegible]	WILLIAM C. [illegible]	207-34-4665	ROGER S. OLSEN	322-00-0281
HERBERT E. [illegible]GHTON	237-[illegible]	JOHN W. LENEHAN	090-20-3160	EDWARD A. O'NEILL	123-05-4160
BRENTON S. [illegible]WN	Can. 701-[illegible]	H. DONALD LINDELL	220-10-8764	JOHN K. RECKTENWALL	466-10-4003
WILLARD A. [illegible]MS	513-[illegible]	ROBERT M. LOKID	093-14-0263	ROBERT K. RUESCH	134-10-0761
ROYAL E. GORDON	407-[illegible]	R. NEWELL LUBBY	520-05-4578	LEON D. SALOTTOLO	050-10-3542
WOODLEY D. [illegible]RDON	513-[illegible]	LUKE D. LYNCH	080-16-1867	GEORGE M. SILVIS	090-05-0225
G. ROGERS H[illegible]E	563-[illegible]	ROBERT H. MORGAN	079-14-8256	HOYT G. VOYLES	257-05-3448

DIRECTORS OR TRUSTEES**

JOHN W. DRY[illegible]	SS # 086-[illegible]	FREDERICK E. [illegible]	SS # 230-05-4806	PETER S. PAINE	SS # 096-03-6618
EDWARD R. E[illegible]	135-0[illegible]	ALLEN T. LAMBERT	Can. 227-40-4851	DALE E. SHARP	113-21-2700
J. VICTOR HEI[illegible]	160-[illegible]	ROBERT D. LILLEY	090-03-4939	JOSEPH WEINTRAUB	261-16-[illegible]
JEROME H. HOLLAND	156-[illegible]	E. HERRICK LOW	087-12-4363	NATHAN H. WENTWORTH	133-16-2936
DONALD J. HU[illegible]EY	028-[illegible]	MILTON W. MAYS	087-09-3562	F. PERRY WILSON	150-05-4626
HAROLD E. JOH[illegible]	528-[illegible]	R. E. McNEILL, JR.	253-05-7161	GEORGE G. ZIPF	168-10-0062

STATE OF NEW YORK }
COUNTY OF NEW YORK } ss

Milton W. Mays, President, Geoffrey Davey, Vice President & Secretary, Byron B. Redman, Vice President & Controller* of THE CONTINENTAL INSURANCE COMPANY, being duly sworn, each for himself deposes and says that they are above described officers of the said insurer, and that on the thirty-first day of December last, all of the herein described assets were the absolute property of the said insurer, free and clear from any liens or claims thereon, except as herein stated, and that the annexed statement, together with related exhibits, schedules and explanations therein contained, annexed or referred to, is a full and true statement of all the assets and liabilities and of the condition and affairs of the said insurer as of the thirty-first day of December last, and of the income and deductions therefrom for the year ended on that date, according to the best of their information, knowledge and belief, respectively.

Subscribed and sworn to before me this

16 day of February 1973

[illegible]

[illegible]
Notary Public, State of New York
No. 24-[illegible]
Qualified in [illegible] County
Certificate Filed in [illegible] Co.
Commission Expires [illegible], 1973

Milton W. Mays
President

Geoffrey Davey
Vice President & Secretary

Byron B. Redman
Vice President & Controller*

* or corresponding persons having charge of the accounts and finances of the insurer.

Note: In the case of United States Branches the affidavit must be amended to show that it covers the statement of the United States Branch. If the United States Manager or the Attorney-in-Fact of a Reciprocal Exchange or Lloyds Underwriters is a corporation the affidavit must be signed by two (or three) principal officers of the corporation or if a partnership by two (or three) of the principal members of the partnership.

** show name and social security number.

UNDERWRITING AND INVESTMENT EXHIBIT

PART 4 — EXPENSES

	LOSS ADJUSTMENT EXPENSES (1)	OTHER UNDERWRITING EXPENSES (2)	INVESTMENT EXPENSES (3)	TOTAL (4)
1. Claim adjustment services:				
(a) Direct	37,638,441.69	0	0	37,638,441.69
(b) Reinsurance assumed	47,905,669.82	0	0	47,905,669.82
(c) Reinsurance ceded	49,983,705.31	0	0	49,983,705.31
(d) Net claim adjustment services	35,560,396.20	0	0	35,560,396.20
2. Commission and brokerage:				
(a) Direct	9,665.11	[illegible]	0	72,498,731.23
(b) Reinsurance assumed	1,317,409.64	[illegible]	0	203,110,998.75
(c) Reinsurance ceded	718,419.78	[illegible]	0	174,308,507.93
(d) Contingent—net	0	[illegible]	0	3,818,576.51
(e) Policy and membership fees	0	2,262.93	0	2,262.93
(f) Net commission and brokerage	608,644.97	[illegible]	0	105,122,061.54
3. Allowances to managers and agents	0	418,914.79	0	418,914.79
4. Advertising	0	1,553,376.90	0	1,553,376.90
5. Boards, bureaus and associations	0	[illegible]	0	4,544,118.27
6. Surveys and underwriting reports	187.13	[illegible]	0	1,327,093.91
7. Audit of assureds' records	0	[illegible]	0	113,276.40
8. Salaries	5,951,042.28	[illegible]	359,252.59	34,094,768.07
9. Employee relations and welfare	1,787,279.11	[illegible]	61,177.83	6,616,406.74
10. Insurance	12,566.58	[illegible]	29.48	84,571.38
11. Directors' fees	11,207.90	[illegible]	54,812.18	130,376.80
12. Travel and travel items	811,467.52	[illegible]	17,897.57	3,163,940.27
13. Rent and rent items	791,940.93	[illegible]	45,698.87	4,779,972.56
14. Equipment	277,249.54	[illegible]	2,866.25	1,020,742.78
15. Printing and stationery	280,593.90	1,620,367.52	24,094.05	1,925,055.48
16. Postage, telephone and telegraph, exchange and express	496,696.38	2,043,390.34	19,851.83	2,557,938.55
17. Legal and auditing	37,437.19	[illegible]	82,355.20	411,717.85
17a. Totals (Items 3 to 17)	10,457,668.45	51,634,566.45	668,035.85	62,740,270.75
18. Taxes, licenses and fees:				
(a) State and local insurance taxes	0	12,463,499.82	0	12,463,499.82
(b) Insurance department licenses and fees	0	257,187.90	0	257,187.90
(c) Payroll taxes	219,902.98	1,515,637.71	12,426.34	1,747,967.00
(d) All other (excluding federal and foreign income and real estate)	0	1,235,171.19	2,531.40	1,237,702.59
(e) Total taxes, licenses and fees	219,902.98	15,451,496.62	14,957.74	15,686,357.31
19. Real estate expenses	0	0	1,806,047.19	1,806,047.19
20. Real estate taxes	0	0	700,164.06	700,164.06
21. Miscellaneous (Itemize):				
(a) Income from Special Services	-2,437,569.68	-1,426,652.58	-36,048.98	-3,900,251.24
(b) Donations	0	584,080.44	0	584,080.44
(c) Outside Services	1,669,762.89	6,572,999.61	81,308.81	8,324,071.31
22. Total expenses incurred	46,078,825.78	177,309,907.11	3,234,464.67	226,623,197.56
23. Less unpaid expenses—current year	41,822,715.00	15,792,871.02	136,054.26	57,691,640.28
24. Add unpaid expenses—previous year	37,464,701.13	13,435,772.64	47,632.07	50,948,105.84
25. Total expenses paid	41,720,811.91	175,012,808.73	3,146,042.48	219,879,663.12

Form 1 NY

ANNUAL STATEMENT FOR THE YEAR 1972 OF THE CONTINENTAL INSURANCE COMPANY

Write in Name of Insurer: THE CONTINENTAL INSURANCE COMPANIES

SCHEDULE O

Losses Other Than Auto Liability (B. I.), Liability Other Than Auto (B. I.) and Workmen's Compensation

(a)	Losses paid during the year less salvage and reinsurance received thereon during the year (a)			Salvage and reinsurance received in the current year			(6) Total (col. 2 + 3 + 4 - 5 - 6 - 7) and deduct amount shown in col. 8, Part 2	(9) Losses paid during 1971 on losses incurred prior to 1971 (col. 2 + 3 + 4, Schedule O, 1971)	Losses unpaid December 31 of current year				Total losses incurred to December 31 of current year		Estimated liability on unpaid losses		Change in such estimated liability	
	(1) On losses incurred during 1972	(2) On losses incurred during 1971	(3) On losses incurred prior to 1971	(4) On losses incurred during 1971 and paid during 1971	(5) On losses incurred prior to 1971 and paid during 1971	(7) On losses paid prior to 1971			(10) On losses incurred during 1972	(11) On losses incurred during 1971	(12) On losses incurred prior to 1971	(13) Total (col. 10 + 11 + 12) (b)	(14) On losses incurred during 1972 (col. 2 + 3 + 4 + 11 + 12)	(15) On losses incurred prior to 1971 (col. 6 - 6, 9 - 12)	(16) Dec. 31, 1971 per col. 5 Part 3A, 1971 (b)	(17) Dec. 31, 1970 per col. 5 Part 3A, 1970 (b)	(18) Dec. 31, 1971 (col. 16 less col. 16)	(19) Dec. 31, 1970 (col. 17 less col. 17)
1. Fire	39,205,711.89	19,712,595.80	5,274,228.07	83,934.96	5,369.45	15,373.06	60,037,958.31	25,962,078.30	17,803,887.26	1,979,163.41	3,449,049.55	43,232,100.22	30,365,136.85	34,509,986.49	55,609,797.06	29,639,163.64	-1,244,660.23	4,970,822.85
2. Allied lines	10,105,573.19	4,780,450.75	1,267,838.22	11,079.55	874.13	11,995.90	16,129,953.01	7,549,204.41	11,910,338.90	1,139,984.73	456,749.39	13,487,073.02	7,625,023.12	9,252,917.89	10,000,884.14	10,681,653.39	-2,375,861.02	-1,428,735.50
4. Homeowners multiple peril	38,921,349.37	16,199,526.97	2,937,453.51	19,715.29	281.88	2,342.55	58,031,970.03	16,068,430.05	20,943,820.87	2,997,196.91	4,661,305.23	28,562,323.05	26,751,662.66	23,666,886.95	28,638,588.89	24,919,383.08	-1,887,126.23	-1,252,496.13
5. Commercial multiple peril	19,834,962.03	9,668,629.65	9,033,395.13	157,634.48	9,990.23	47,243.63	38,299,528.66	16,919,311.56	36,832,420.87	7,968,900.89	16,767,407.95	61,568,729.71 (a)	43,416,133.25	42,709,924.04	47,122,792.70	36,171,809.11	-3,706,659.45	6,538,114.93
6. Ocean marine	17,100,583.34	13,513,720.26	12,578,263.13	310,608.58	690,832.84	509,393.77	39,681,771.54	25,106,648.60	37,769,677.44	11,582,630.72	21,231,104.54	70,583,208.70	58,905,518.65	58,225,183.43	62,409,855.96	58,999,216.73	-3,904,417.31	-734,033.30
9. Inland marine	10,907,698.54	8,524,618.01	1,905,663.13	298,894.52	222,832.87	676,303.19	20,139,969.10	10,343,832.75	15,010,129.37	1,599,464.39	1,962,931.60	18,532,125.32	13,952,277.09	13,989,194.59	16,790,326.99	16,027,191.18	-2,797,829.90	-2,037,996.59
10																		
11																		
12																		
14. Group accident and health	9,180,388.89	3,691,072.09	1,472,685.73	0	0	0	10,308,146.67	2,998,136.25	4,390,178.46	2,536,428.21	2,991,753.09	9,918,359.76	10,655,939.12	7,662,551.07	6,709,237.70	4,277,641.05	3,946,701.42	3,254,914.02
15.1 Collectively renewable A & H	9,081,355.93	6,205,904.84	2,982,192.76	0	0	0	18,269,093.53	18,299,533.44	8,716,832.27	2,901,439.01	4,280,553.58	15,898,824.86	16,369,690.19	25,562,279.78	16,014,956.13	28,339,470.54	334,732.08	-2,757,190.76
15.2 Non-cancellable A & H	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
15.3 Guaranteed renewable A & H	84,629.87	48,109.40	7,325.61	0	0	0	139,865.94	17,844.44	36,298.08	16,791.84	0	53,089.92	72,229.91	25,173.11	29,281.82	13,119.76	42,968.06	12,053.35
15.4 Non-renewable for stated reasons only	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
15.5 Other accident only	2,154,960.30	727,633.86	220,675.76	0	0	0	3,103,269.92	664,770.68	2,611,788.39	36,196.06	440,344.94	3,088,329.39	1,426,850.68	1,349,791.18	2,792,979.74	1,691,941.61	-1,366,129.12	-346,150.43
15.6 All other A & H	809,379.17	426,108.14	64,214.98	0	0	0	1,299,686.29	382,789.04	408,523.96	89,066.89	107,800.06	565,390.91	687,184.09	534,760.08	465,363.42	404,210.29	180,800.65	130,589.79
18. Liability other than auto (P.D.) (c)	X X X	X X X	3,714,664.62	X X X	0	1,339.84	3,713,324.78	9,113,080.89	X X X	X X X	18,137,961.65	18,137,961.65	15,852,256.29	20,068,309.16	13,402,569.08	17,206,272.92	2,448,677.25	2,799,036.24
20. Auto liability (P.D.) (c)	X X X	X X X	3,905,825.91	X X X	4,017.98	2,390.97	3,698,426.95	19,834,891.98	X X X	X X X	4,426,466.69	4,426,466.69	8,098,301.80	89,899,974.94	9,377,698.90	30,737,588.83	-1,345,396.90	-4,898,013.89
21. Auto phys. damage	54,907,059.94	9,909,316.75	-1,417,139.81	493,306.30	10,138.89	188,662.42	61,789,389.29	9,909,065.68	16,968,999.66	149,998.98	681,794.98	18,800,793.72	8,944,098.83	8,984,639.94	19,587,555.67	14,013,226.73	-8,983,485.44	-5,248,787.19
22. Aircraft (all perils)	3,286,668.06	2,331,865.62	996,123.84	0	0	0	6,214,656.98	3,067,999.80	8,660,888.39	2,998,110.36	1,999,896.22	13,658,894.97	4,889,171.69	9,863,089.28	7,653,443.30	4,354,825.66	45,729.99	1,308,263.62
23. Fidelity	3,111,771.68	3,137,496.94	3,378,362.33	876,598.26	178,250.27	398,686.73	8,931,988.89	3,689,899.63	4,858,329.78	2,898,152.19	3,324,615.36	11,081,097.33	12,070,624.98	10,388,136.77	10,842,484.31	10,712,376.45	1,128,160.62	-323,819.68
24. Surety	943,501.10	237,408.95	768,387.15	-28,796.59	699,496.69	802,880.48	498,308.63	1,318,885.36	983,689.98	978,677.68	1,244,707.43	3,226,075.81	1,428,189.92	3,140,617.19	4,302,380.46	3,917,279.04	-774,232.54	-406,861.87
26. Burglary and theft	707,686.13	176,806.34	7,010.48	168.48	0	3,324.41	888,889.48	189,249.99	249,186.16	3,704.84	19,495.05	299,992.04	222,777.90	327,574.35	293,113.99	-120,629.73	-67,336.45
27. Boiler and machinery	1,387,039.43	782,600.99	72,861.34	6,542.08	201.19	3,316.63	2,248,421.88	891,211.17	1,086,112.98	66,749.22	188,611.34	1,341,473.54	1,016,822.81	1,080,482.68	1,483,908.08	1,146,560.10	-479,775.13	-96,057.42
28. Credit	684,296.80	778,348.91	39,639.99	216,779.00	52,613.36	86,949.48	1,065,881.12	1,300,711.87	1,549,794.17	216,303.75	86,685.77	1,850,783.69	1,098,955.68	1,354,403.87	1,718,704.73	1,863,980.62	-639,749.05	-509,576.75
29. International	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
30. Reinsurance assumed and [illegible]	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
31. Totals	244,442,722.48	101,983,799.43	46,791,146.26	2,294,206.15	1,844,802.72	3,209,970.40	356,432,538.80	168,779,642.25	212,430,649.77	39,555,199.65	81,866,992.64	333,850,438.05	271,562,693.93	297,590,478.40	296,564,878.98	297,619,900.45	-29,002,183.05	-29,002.08

* Exclude reserves for Fidelity and Surety losses incurred but not reported.

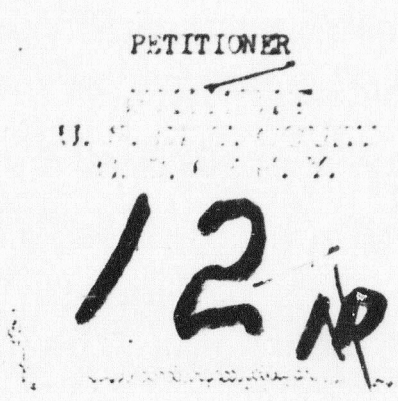
Note: Percentage of Participation
Schedules C, D, E, G and F
Continental Insurance Company 25%
Firemen's Insurance Company 15%
Fidelity and Casualty [illegible]
Seaboard Fire & Marine Company [illegible]

(a) Salvage and reinsurance as used in columns 2, 3 and 4 include (1) received in cash, and (2) reinsurance recoverable (changed during year of statement) if carried on a ledger asset, as used in columns 5, 6 and 7 include (1) received in cash and not carried on a ledger asset in previous statements, and (2) reinsurance recoverable (changed during year of statement) if carried on a ledger asset.

(b) Fidelity and Surety reserves obtained from column (3) lines 23 and 24, Part 3A.
(c) Include amounts only for those losses which were incurred prior to 1971.

A 154

PETITIONER



JUN 19 1973

Mr. W.F. Gleason Jr.
Secretary and Tax Counsel
The Continental Corporation
80 Maiden Lane
New York, N.Y. 10038

Dear Mr. Gleason:

In accordance with Revenue Ruling 71-20, we have made a study of your machine-sensible record retention policies and automatic data processing practices. This letter is our confirmation of retention arrangements you made with representatives of our Audit Division.

A list of records, retention periods, and any other provisions agreed upon is enclosed. Please sign and return the concurrence copy of this letter, which will indicate that you agree to the arrangements described on the enclosure. A return addressed envelope is enclosed for your convenience.

If you make any changes in your ADP accounting system or record formats that will affect your ability to comply with these provisions, please notify us.

In the course of conducting our tax audits through the use of your ADP records, it may become appropriate for us to make new retention arrangements with you. If this occurs we will meet with you again and enter into a new agreement.

Sincerely yours,

District Director

Enclosures:
List
Copy of this letter
Envelope

Concurrence: Signature _____
Title _____
Date _____

The Continental Corporation

Machine-Sensible Record Description:

General Expenses

File number of magnetic tape 110101

Losses (Ceded Monthly) - including salvage, paid losses & claim expenses

File number of magnetic tape 421001

The Diners Club, Inc. (Subsidiary)

E.I. 13-159673

Machine-Sensible Record Description:

Expense detail listing (magnetic tape)

The Continental Corporation

Machine-Sensible Record Retention Period:

The record retention period for any year shall terminate upon the earliest of the expiration of the Statute of Limitations or after a computer-assisted data retrieval is performed for that year.

Other Provisions Agreed Upon:

The Internal Revenue Service and/or Taxpayer will furnish retrieval programs which will be run against the taxpayer's tapes selecting records based on our parameters for each tax year. Taxpayer to make available computer time and related ADP facilities at a time mutually agreeable to both parties. Program documentation in connection with the file listed above shall be retained for the period that such file is retained. Documentation should include the record format, source program listing, flow charts and/or a narrative description in sufficient detail to explain the program.

All detail records to be retained in hard copy in accordance with Rev. Proc. 64-12.

Other Divisions, Subsidiaries, Foreign or other Entities:

No retention of machine-sensible records is required as of this data, as the hard copy retained is adequate for tax audit purposes. In the future however, in the event that there is a substantial increase in the volume of records, retention requirements will be revised.

This agreement to be in effect starting January 1, 1972.

Miscellaneous, Tax
75-MD-91

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------x

UNITED STATES OF AMERICA and WALTER ROSS, Revenue Agent, Internal Revenue Service,

Petitioners,

- against -

GEOFFREY DAVEY, As Secretary of THE CONTINENTAL CORPORATION,

Respondent.

----------x

MEMORANDUM DECISION

M18-304

HENRY F. WERKER, D. J.

This proceeding has been brought by the petitioners for an order compelling the respondent to comply with a summons issued by the Internal Revenue Service under Title 26, United States Code, Section 7604(a).

The Summons required the respondent to produce:

> "All Machine-Sensible Data Media used for recording, consolidating or summarizing accounting or financial transactions and records in respect of general expenses and losses expended or incurred during the years 1971 and 1972, including but not limited to Magnetic Tape number 110101 and Magnetic Tape Number 421001, for each year respectively."

The respondent Geoffrey Davey, is the Vice President and Secretary of the Continental Corporation. This is a large conglomerate which is subject to annual audit and files consolidated tax returns involving numerous subsidiaries.

The respondent has refused to furnish the tapes requested.

Concisely stated the reason for doing so is that he has made available to the Internal Revenue Service pre-set printouts of all of these tapes and can

furnish to the Service any other printouts which it may require for other ledgers.

Respondent is further concerned with the safety of the tapes and is unwilling to provide duplicates without being reimbursed for the cost of reproducing the tapes. The tapes are stored in Glens Falls, New York and Chicago, Illinois in specially constructed storage areas.

Basically respondent is saying, "I am not required to give this information to you in the form in which you want it. If I give it to you in the form of a printout which my corporation uses for purposes of reporting to Insurance Commissioners and the form used in preparation of the tax return which you are auditing that should be sufficient and you are entitled to nothing else." This of course denies to petitioner the full utility of the tapes and provides it with the information only in the form determined by respondent. It necessarily involves a great deal of manual examination of many thousands of printout pages which would not be necessary if the tapes were made available to petitioner and programmed to print out the audit trail information which it requires to satisfy itself that Continental Corporation has filed a proper return.

Semantics concerning "primary" and "secondary source" do not aid in the solution of the problem. Nor does a discussion of visible or legible. The fact that respondent's employer may have complied with section 832 of Title 26 and the statement of expenses as approved by the National Convention of Insurance Commissioners (See Title 26, United States Code, Section 832(6)) does not for purposes of audit determine what records may be required to be produced.

The Internal Revenue Service in issuing Revenue Procedure 64-12 with respect to "Guidelines for record requirements to be followed in cases where part or all of the accounting systems are maintained within automatic data processing

systems" indicated in Sec. 4 ADP Guidelines what would be required. In Rev. Ruling 71-20 it required that in effect the tapes were to be retained like any other books or records "so long as the contents may become material in the administration of any internal revenue law."

An audit in order to be effective must be independent. The taxpayer cannot dictate what information is to be examined for mistake or evasion. Cf. Foster v. United States, 265 F.2d 183 (2d Cir. 1958), cert. denied, 360 U.S. 912 (1959). The taxpayer always has available the District Court if it feels that the Internal Revenue Service is abusing its discretion in this regard.

The legislature has recognized in Federal Rule of Civil Procedure 32 that in actions pending before a federal district court "documents" includes "data compilations from which information can be obtained, translated, if necessary * * * through detection devices into reasonably usable form." At least one case has held that this would include tapes. Adams v. Dan River Mills, Inc., 54 F.R.D. 220 (W.D. Va. 1972).

Upon analogy to that rule and case I am of the opinion that the Internal Revenue Service should have made available to it the tapes summoned so that it may program those tapes to produce the audit trail necessarily required by it to complete its audit of Continental Corporation's tax returns. The court recognizes that there are as many form dimensions in a tape as the items recorded upon it and that requiring the Service to take these off manually would overburden the Service. This on balance has tipped the scale in favor of the Service.

However, I am of the opinion that Continental Corporation is entitled to a protective order to the extent of safeguarding the original tapes and the cost of reproducing those tapes. I therefore direct that Continental Corporation

prepare under the supervision of the Computer Specialist who may be assigned to this case a duplicate copy of any and all tapes encompassed within the summons served upon the respondent herein and that the duplicate tapes be delivered to the Internal Revenue Service upon payment of the expense of producing those tapes.

Without reflection upon the expertise of the Computer Specialists or of the Internal Revenue Service I am of the opinion that the taxpayer should be afforded the right to retain the original since the possibility of editing, erasure or destruction or loss always exists.

Finally, since the taxpayer's subsidiary Insco will not permit others to use its computer for purposes of programming the tapes for the information the Service feels it needs and the Service is unwilling to have Insco operate the computer with the Service's programming, I will not require the Service to cooperate and will leave it to its own devices to find a computer compatible with these tapes.

The petition is granted subject to the conditions herein contained.

SO ORDERED

DATED: New York, New York

December 3, 1975

/s/ Henry F. Werker

U. S. D. J.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------x

UNITED STATES OF AMERICA and WALTER ROSS, Revenue Agent, Internal Revenue Service,

Petitioners,

- against -

GEOFFREY DAVEY, As Secretary of THE CONTINENTAL CORPORATION,

Respondent.

----------x

-AMENDMENT TO

MEMORANDUM DECISION

M18-304

#43481

HENRY F. WERKER, D. J.

Memorandum Decision in the above-entitled action dated December 3, 1975 is amended as follows:

Page 3, line 10 - "Federal Rule of Civil Procedure 32" - SHOULD READ "Federal Rule of Civil Procedure 34."

Add APPEARANCES at the end of document:

THOMAS J. CAHILL
United States Attorney for the
Southern District of New York
One St. Andrew's Plaza
New York, New York 11007

BY: PAUL H. SILVERMAN
Assistant United States Attorney
Of Counsel

Attorney for Petitioners

ARNOLD & PORTER
1229 - 19th Street, N. W.
Washington, D. C. 20036

BY: WALTER J. ROCKLER

and

DEC 19 11 35 AM '75

GRUBBS, LEAHY & DONOVAN
27 Cedar Street
New York, New York 10038

BY: EDWARD T. DONOVAN
Of Counsel

Attorneys for Respondent

SO ORDERED.

DATED: New York, New York

December 16, 1975

/s/ Henry Werker
U. S. D. J.

A 163 COUNTER - WERKER, H.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

U.S. DISTRICT COURT
FILED 12-16-75
S.D. of NEW YORK

RECEIVED IN CHAMBERS
OF JUDGE HENRY F. WERKER

DEC 12 1975

UNITED STATES OF AMERICA and WALTER ROSS, REVENUE AGENT, INTERNAL REVENUE SERVICE,

Petitioners,

- v -

GEOFFREY DAVEY, As Secretary of THE CONTINENTAL CORPORATION,

Respondent.

JUDGMENT

M18-304

WHEREAS, the above-captioned Internal Revenue Service summons enforcement proceeding was decided by this Court in a memorandum decision filed on December 4, 1975, after reading all the pleadings, affidavits, memoranda of law, and after a hearing at which evidence was submitted by both parties, it is hereby

ORDERED, ADJUDGED and DIRECTED that Respondent, Geoffrey Davey, as Secretary of THE CONTINENTAL CORPORATION, shall promptly, and in no event more than 60 days after entry of this judgment, (a) prepare under the supervision of a Computer Specialist or other representative who may be assigned by the Internal Revenue Service to supervise the involved Continental Corporation audit, a duplicate copy of all computer tapes in existence on January 27, 1975 which are encompassed within the summons, dated January 27, 1975, and served upon the Respondent herein, to wit: All Machine-Sensible Data Media used for recording, consolidating or summarizing accounting or

financial transactions and records in respect of general expenses and losses expended or incurred during the years 1971 and 1972, including but not limited to Magnetic Tape Number 110101 for the year 1972 and Magnetic Tape Number 421001 for the years 1971 and 1972, but excluding Magnetic Tape Number 110101 for the year 1971, and (b) prepare and deliver to the Internal Revenue Service representative assigned to the supervision of the duplication of the aforestated tapes an itemized bill which shall set forth the reasonable and necessary expenses of duplication of the aforestated tapes, and it is further,

ORDERED, ADJUDGED, and DIRECTED that the aforestated duplicate tapes be delivered to the Internal Revenue Service upon the payment by the Internal Revenue Service of the reasonable and necessary expenses of duplication of the aforestated tapes.

Dated: New York, New York

December ~~12~~ 17th, 1975

Henry Werker
U.S.D.J.

Judgment Entered: 12 - 18 - 75

BEST COPY AVAILABLE

Clerk